United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7600

B

United States Court of Appeals

FOR THE SECOND CIRCUIT

J. P. FOLEY & COMPANY, INC., JOHN P. FOLEY, JR., ANNE A. FOLEY, and ANITA SALISBURY,

Plaintiffs-Appellants,

against

NEW YORK STOCK EXCHANGE, and AMERICAN STOCK EXCHANGE,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

Volume I—Pages A1 to A625

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DOCKET ENTRIES

CIVIL DOCKET
UNITED STATES DISTRICT COURT

JUDGE [illegible]

LASKA
71 CIV. 2987
JUDGE [illegible]

Jury demand date:
by Pltff. 7-2-71

D. C. Form No. 106 Rev.

TITLE OF CASE

J.P. FOLEY, INC. JOHN P. FOLEY JR. ANNE A. FOLEY AND ANITA SALISBURY

AGAINST,

NEW YORK STOCK EXCHANGE, AND AMERICAN STOCK EXCHANGE.

Vs.

11/30

11-1-72(Sub)

UNITED STATES COURT OF APPEALS FILED JAN 3 1977 A. DANIEL FUSARO, CLERK SECOND CIRCUIT

ATTORNEYS

For plaintiff:
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~~Two Pennsylvania Plaza,~~
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2-10-76
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1 Chase Manhattan Plaza, NY 10005 422-2660
~~FORSYTHE, McGOVERN, PEARSON & NASH~~
~~345 Park Ave., NYC 10022~~
~~defc. Am. Stock Exchange~~
LORD, DAY & LORD (Amer. Stock Exchange)
25 Broadway, New York, N.Y. 10004

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed X	Clerk	7/2/71	Pltf Chg #6	15 —	
		7/9/71	U.S. Tse		15 —
J.S. 6 mailed	Marshal				
Basis of Action: VIOL. S.E.C. ACT. 1934 $14,000,000.00	Docket fee				
	Witness fees				
Action arose at:	Depositions				

Docket Entries

J.[illegible] [illegible]EY, ITF, E.T. ET AL VS. NEW YORK STOCK EXCHANGE, ET-[illegible] JUDGE [illegible]

JUDGE [illegible]AN 71 CIV. 2987

DATE	PROCEEDINGS	Date Order or Judgment Noted
Jul 2-71	Filed Complaint. Issued Summons.	
Jul 26-71	Filed ANSWER of New York Stock Exchange, Inc. to complaint.	MTH&H
Jul 23-71	Filed stipulation and order extending deft. American Stock Exchange's time to answer complaint to 8/27/71. So ordered. Frankel, J.	
Aug.2-71	Filed pltffs' notice to take deposition of deft. N.Y. Stock Exchange, on 9-27-71.	
Aug.26-71	Filed stip and order that the time for American Stock Exchange to answer complaint is ext. from 8-27-71 to 9-17-71. Cannella,J.	
Sep.22-71	Filed ANSWER of American Stock Exchange, to complaint	FMcP&N
Sep.28-71	Filed Summons with Marshal's ret. Served; American Stock Exchange, by Mr. Lee, Jr., on 7-8-71 New York Stock Exchange, by Mr. Clark on 7-6-71	
Jul 28-72	Filed Notice of Motion re: Amend Complaint. Ret. 8/8/72. (by pltf.)	
Jul 28-72	Filed Pltfs'.Memorandum in support of motion to amend complaint.	
Sep.6-72	Filed memo-endorsed on pltff's motion filed 7-28-72 to amend complaint: This motion is granted without opposition. The amended complaint, shall be served & filed within 10 days. So ordered. McLean,J. m/n	
Sep.13-72	Filed Order that pltff's may file their amended complaint. Service of the amended complaint by firs class mail upon Milbank Twee, Hadley & McCloy & Forsythe,McGovern,Pearson & Nash attys for deft. Bauman,J.	
Sep.18-72	Filed amended complaint.	
Sep.25-72	Filed ANSWER of deft. N.Y. Stock Exchnage to amended complaint.	MTH&Hc.
Nov.1-72	Filed stip & order that attys for deft. American Stock Exchange be change to Lord,Day & Lord. So ordered. Knapp,J.	
Nov.1-72	Filed ANSWER of American Stock Exchange to amended complaint.	L,D&L
Feb.13-73	Filed pltff's affidavit & notice of motion ret. before Knapp,J. on 2-23-73 for a protective order.	
Feb.8-73	Filed pltff's request for production of documents.	
Mar.8-73	Filed pltff's affidavits & notice of motion ret. before Knapp,J. on 3-23-73 granting summary judgment.	
Mar.8-73	Filed pltff's memorandum in support of motion ret. on 3-23-73.	
May 4,73	Filed notice of motion ; ret. 5/11/73 at 2:00 p.m. Room 619;Re: compel discovery	
May 4,73	Filed Defts. memo in support of motion to compel discovery.	
May 11,73	Filed Stip and order return date on motion to compel discovery is adjourned until 6/8/73. KNAPP,J.	
Jun7-73	Filed Stip and Order that the motion of N.Y. Stock Exchange ret: 6-8-73 is ajd'd to 6-15-73 and that counsel for pltffs shall serve answering papers on or before 6-8-73 KNAPP,J.	
Jun 12-73	Filed Answering Affidavit of David J. Bersha...	
Jun 12-73	Filed Memorandum in opposition to motion by deft. New York Stock Exchange.	
Jun 15,73	Filed reply affdvt. of Russell Brooks, in support of motion to compel discovery.	
Jun 15,73	Filed Reply memo in support of motion to compel discovery.	
Sep.14-73	Filed deft's notice to take deposition of James J. Rush, as witness. Issued subp.	
Feb.7-74	Filed ORDER: Having reviewed the Report of Magistrate Hartenstine, dated 12-14-73,recommending that motion of deft,N.Y.Stock Exc. for an order compelling discovery be granted in part & denied, in part, the above metioned report is ,in all respects approved. So ordered. Knapp,J. Mailed notice.	
Feb.14-74	Filed Magistrate's report (C.J. Hartenstine)	
May 13/74	Filed pltffs' notice to produce to deft.	
Jun 11-74	Filed Deft.NY Stock Exchange,Inc.response to notice to produce.	

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Docket Entries

Civil 71 Civ. 2987 J.P. FOLEY ET AL VS NY STOCK EXCHANGE
DOCKET PAGE -3-

DATE	PROCEEDINGS
Jun 28-74	Filed pltfs. affdt, and notice of motion for an order directing the said deft.(NY Stock Exchange) to produce documents ret. on: July 11,1974.
Jul. 1-74	Filed memo endorsed on pltff's motion filed 6-28-74 Re: Documents, Motion referred to Magistrate Bartenstine to herr & report. So ordered. Knapp,J. m/n
Jul 29-74	Filed Deft.NY Stock Exchange,Inc. Notice to take deposition of Melville H.Ireland.
Aug.30-74	Filed Affdvt of Payl H.Fitzgerald for Deft.NY Stock Exchange Inc. in opposition to motion to compel production of documents requested in pltffs'notice to produce dated 5/8/74 etc.
Aug.30-74	Filed Affdvt of Russell E.Brooks for Deft.NY Stock Exchange in opposition to pltffs'motion to compel production of documents requested in pltffs/notice to produce dated 5/8/74/
Sep.18-74	Filed stip & order that deposition of M.H. Ireland be adj. from 9-20-74 to 10-10-74. Knapp,J.
Sep.25-74	Filed pltff's interrogs addressed to N.Y.Stock Exchange.
Oct.29-74	Filed deft's N.Y.Stock Exchange answers to pltff's interrogs.
Oct.29-74	Filed " " " " objections to pltff's interrogs.
Feb.5-75	Filed pltff's affidavit & notice of motion to consolidate this action with 70 Civ 4194 ret.2-14-75.
Feb.5-75	Filed pltff's memorandum of law in support of their motion to consolidate.
2/13/75	Filed memo. oflaw of Exchange re: opposition to motion to consolidate
2/13/75	Filed deft. N.Y. Stock Exchange,Inc.'s affdvt. re: opposition to motion to consolidate.
02-13-75	Filed pltff.'s reply memo. of law in support of consolidation.
02-14-75	Filed Deft's Notice of taking deposition of Leonard Feldman.Subpoena issued.
03-04-75	Filed stip & order that deposition of Leonard Feldman, as a witness is adj. from 3-4-75 to 3-25-75. Knapp,J.
03-10-75	Filed Memorandum Opinion #42016: Pltff's have moved for an order consolidating with 70 Civ 4194(CHT) Pltff's motion for consolidation is denied. So ordered. Tenney,J. m/n
3-20-75	Filed Case reassigned to Judge Lasker mn
3-20-75	Filed pltff's affidavits & notice of motion vacating a notice of deposition ret. 4-4-75.
Nov 26.75	Filed Affidavit by George R. Reid II in response to deft N.Y.Stock Exchan motion.

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Docket Entries

71 Civ 2987 J.P. Foley, Inc. etal vs. New York Stock Exchange, etano 71 Civ 2987

DATE	PROCEEDINGS
3-20-75	Filed stip & order that the deposition of Leonard Feldman, as a witness, is adj. from 3-25-75 to 4-29-75. Lasker, J.
3-31-75	Filed Memo-End on back of Motion filed 3-20-75.....Respectfully referred to Mag. Hartenstine foir review & recommendation.....Lasker, J.
4-2-75	Filed deft . NY Stock Exc.'s Affdvt. in opposition to motion to vacate notice of deposition.
4-2-75	Filed Memo. of deft. NY Stock Exc., Inc. in opposition to pltffs' motion to vacate notice of deposition.
4-4-75	Filed Memo of Law of Pltff in support of motion for proticetive order.
5-5-75	Filed Deft. N.Y. Stock Exc.'s Notice of Motion for an order disqualifying the firm of Milberg & Weiss from rejprosenting the pltffs.....ret. 5-15-75....at 10Am Rm 2903.
5-5-75	Filed Memo of Law of Deft. NY Stock Exc. in support of motion disqualifying counsel for pltffs.
5-14-75	Filed Pltffs' Notice of Cross-Motion foran order striking the answer of the deft. NY Stock Exc. to the amended complt.....ret. 5-28-75....10Am Rm 2903.
5-14-75	Filed Pltffs' memo in opposition to motion to disqualify Milberg & Weiss
5-13-75	Filed Pltff Statement of Deft. NY Stock, Exc. Re: to Pltff's Pre-Trial Order.
5-20-75	Filed Deft. American Stock Exc. 's Notice of Motion for an order granting summ. judg. pur to 56 FRCP.....ret 5-30-75...at 10Am Rm 2903.
5-20-75	Filed Deft. American Stock Exc'sMemo of law in support of its motion for summ. judg.
5-21-75	Filed Stip. & Order that the deposition of L. Feldman as a witness is adj w/o date.... ....in the event that pltffs' motion is denied, the deposition shall be scheduled as soon as is mutually convenient to the parties and to Mr. Feldman within 10 days following the date court's order becomes final....Lasker, J.
5-23-75	Filed Deft. NY Stock Exc.'s Reply Affdvt by R. E. Brooks in support of its motion for an order disqualifying Milberg & Weiss.
5-23-75	Filed Pltff's Reply Memo. in support of its motion for an order disqualifying Counsel for pltff.
5-28-75	Filed Pltffs' Affdvt. ly L. Milberg, in opposition to motion of deft. American Stock Exc. motion for summ. judg.
5-28-75	Filed Pltff's memo of law in opposition to motion of Amer. Stock Exc's for summ. judg.
5-28-75	Filed Pltffs' reply memo. in opposition to deft. N.Y. Stock Exc's motion to disqualify and in support of pltffs' cross motion for the imposition of sanctions.
5-29-75	Filed Reply Memo. of Deft. American Stock Exc. Inc. in suppprt of motion for summ Judg
5-30-75	Filed Pltffs' Memo of Law in reponse to the motion of the American Stock Exc. for summ judg.
6-6-75	Filed Mag. Hartenstine's Report & Recommendation....dated 5-14-75.

71 Civ 2987 MEL Polely Vs N.Y. Stock Exc. Page#5

CIVIL DOCKET

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
6-6-75	Filed Memo-End on back of motion filed 6-26-75.....Ordered, that pltffs' motion is hereby denied.....Lasker,J.mn			
6-9-75	Filed Memorandum#42558....For the reasons set forth above, pltffs' motion to disqualfy Milberg & Weiss is denied w/o prej. to renewal upon the completion of Mr. Feldman's deposition if it occurs. Pltffs' motion to vacate the N.Y. Stock Exc.'s notice of Mr. Feldman's deposition is denied w/o prej. to a motion by mr. Feldman under Rule 30 (d) ofthe FRCP for an order terminating, deferring or limiting his examination on good cause shown. It is so ordered....Lasker, . mn			
6-11-75	Filed Correcting Memorandum$43558.....of the Opinion fld 6-9-75....Lasker,J.mn			
7-10-75	Filed transcript of record of proceedings, dated May 5, 1975			
9-17-75	Filed Memo-End on back of motion fld 5-14-75...The motion is denied...Lasker,J.mn			
10-28-75	Filed Pltffs' Suppl. Affdvt by L. Milberg, in ~~support~~ Re: of deft Amrican Stock Exc, motion for summ judg.			
10-29-75	Filed Pltffs' Notice of deposition of M. H. Ireland.			
11-21-75	Filed Witness M. H. Ireland Notice of Motion for an order quashing the subpoena.. .....ret 12-3-75....at 10AM Rm 1903.			
11-21-75	Filed Memo of M. H. Ireland in support of motion to cacate Notice of deposition.			
11-21-75	Filed Stip & Order that deft. American Stock Exchange Inc. may response to Supplementary Affidavit of Lawrence Milberg is extended from 11/17/75 to & includign the 10th day after deft. is served with further papers which pltff. intend to filed as indicated. Etc. Lasker J.			
11-25-75	Filed Deft. New York Stock Exchange affidavit and notice of motion for an order directing depositon of Melville H. Ireland. Ret. 12-3-75.			
11-25-75	Filed Deft. N.Y. Stock Exchange Inc. Memorandum in support of motion for a protective order.			
11-25-75	Filed Affidavit by Lawrence Milberg in opposition to motion of American Stock Exchange for summary Judgment.			
11-25-75	Filed Affidavit by Edward Wolf with respect to the operation of the American Stock Exchange .			
11-26-75	Filed Affidavit by George R. Reid II in response to deft. N.Y. Stock Exchange motion.			
11-28-75	Filed Memo. End on motion dtd. 11-25-75. Referred to Magistrate Hartenstine as indicated. Lasker J. (mailed notice)			
11-28-75	Filed Memo. End. on motion dtd. 11-21-75. Referred to Magistrate Hartenstine as indicated. Lasker J.(mailed notice)			
12-05-75	Filed Affidavit in opposition by Melvyn I. Weiss to the motions of Melville H. Ireland.			

Docket Entries

71 Civil 2987 J.P. Foley Inc, et al vs. N.Y. Stock Exchange & American Stock Exchange

Page #6 Lasker J.

DATE	FILINGS—PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT	AMOUNT REPORTED IN EMOLUMENT RETURNS
12-09-75	Filed Affidavit by George R. Reid II in support of Deft. AMEX motion for summary judgment.			
12-09-75	Filed Affidavit by Joseph J. Gulick concerning facts in support of motion of Deft. AMEX for summary judgment.			
12-09-75	Filed Affidavit by Norman S. Poser in opposition to Deft. AMEX motion for summary judgment.			
12-09-75	Filed Affidavit by Sigurd J. Severud in support of Deft. AMEX motion for summar y judgment.			
12-09-75	Filed Post Argument Memorandum of Deft. American Stock Exchange Inc. in support of motion for summary judgment.			
12-04-75	Filed Pltffs. Notice of Deposition of Oliver DeG Vanderbilt on 1-5-75.			
12-12-75	Filed Rebuttal Affidavit by Alan J. Russo in support of Ireland's motion for a protective order vacating the notice of deposition & quashing the subpoena.			
12-16-75	Filed Pltffs. Reply affidavit by Edward Wolf in order to refute the contentions set forth inthe affidavit of Norman Poser.			
12-16-75	Filed Pltffs. Supplementary Brief in opposition to summary judgment.			
1-19-76	Filed pltffs. Notice of deposition of dft. American Stock Exchange on 2-17-76.			
02-10-76	Filed Stip & Order that Hawkins Delafield & Wood be substituted as attys. for pltffs. in place & stead of Milberg & Weiss. Lasker J.			
2-24-76	Filed Stip & Order that the deposition of dft. Am. Stock Exchange is adjourned to 3-3-76. Lasker J.			
02-27-76	Filed Deft's. (N.Y. Stock Exch.) affidavit & notice of motion for a stay of trial pending final determination in 70 Civ. 4194 CHT, ret. 3-8-76.			
02-27-76	Filed Deft's. (N.Y. Stock Exch.) memorandum in support of motion for a stay.			
03-05-76	Filed Deft's. (Amer. Stock Exch.) affidavit in opposition to Deft's. (N.Y.Stock Exch.) motion for a stay.			
03-08-76	Filed Pltff's. affidavit in opposition to Deft's. (N.Y.Stock Exch.) motion for a stay.			
03-08-76	Filed Pltff's. memorandum in opposition to Deft's. (N.Y.Stock Exch.) motion for a stay.			
03-10-76	Filed Deft's. (N.Y. Stock Exchange) reply affidavit in support of motion for a stay.			
03-10-76	Filed Deft's. (N.Y. Stock Exchange) reply memorandum in support of motion for a stay.			
03-16-76	Filed Pltffs'. affidavit in opposition to Deft's. (N.Y. Stock Exchange) motion for a stay.			
03-16-76	Filed Pltffs'. supplemental answering brief in opposition to the motion to Deft. (N.Y. Stock Exch.) for a stay.			
03-19-76	Filed Order that the motions of Melville H. Ireland, N.Y. Stock Exchange & American Stock Exchange are all denied. The deposition of Melville H. Ireland shall be commenced within 30 days of the entry of this order.....Lasker J. (mailed notice)			

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Docket Entries

J.F. FOLEY, INC., et al, -v- NEW YORK STOCK EXCHANGE, et al. Lasker,J.

71 Civ. 2987 Page #7

DATE	PROCEEDINGS
03-26-76	Filed Pltff's. notice of entry of order signed 3-18-76 by Lasker,J. on 3-23-76.
03-31-76	Filed Memo End on Deft's. (N.Y. Stock Exchange) motion for a stay of trial. Motion denied.....Lasker,J. (mailed notice)
04-22-76	Filed interrogatories of deft American Stock Exchange to pltffs.
04-22-76	Filed order that the Exchanges application to disqualify Samuel H. Turetsky from any further participation in this action is denied, etc, as indicated. Lasker,J. M/N.
05-10-76	Filed transcript of record of proceedings dated 2-6-76.
05-17-76	Filed Deft's. (American Stock Exchange) trial memorandum.
05-17-76	Filed Deft's. (N.Y. Stock Exchange) amended pretrial statement.
05-17-76	Filed Deft's. (N.Y. Stock Exchange) trial memorandum.
05-19-76	Filed Pltffs'. preliminary requests to charge.
05-19-76	Filed Pltffs'. proposed questions on voir dire.
05-19-76	Filed Pltffs', trial brief.
05-20-76	Filed Deft's. (N.Y.S.E.) requests for voir dire questions.
05-21-76	Filed Deft's. (N.Y.S.E.) objections to Pltffs', request for voir dire questions and preliminary requests to charge.
05-21-76	Filed Deft's. (American Stock Exchange) requests for voir dire questions.
05-25-76	Filed motion of Arthur Young & Co. for an order quashing the subpoena duces tecum served upon it by Pltffs., ret. 5-26-76.
06-25-76	Filed Pltffs', affidavit in support of application to excuse Mr. Rush from appearing pursuant to subpoena, because of his physical condition.
07-02-76	Filed transcript of record of proceedings dated May 24,25,26,27, 1976, June 1, 1976.
07-02-76	Filed transcript of record of proceedings dated June 2,3,7,8, 1976.
07-02-76	Filed transcript of record of proceedings dated June 9,10,11,14, 1976.
07-02-76	Filed transcript of record of proceedings dated June 15,16,17, 1976.
07-14-76	Filed Pltffs'. affidavit & notice of motion for judgment notwithstanding verdict, ret. 7-30-76.
07-28-76	Filed Deft's. (N,Y,S,E.) memorandum in opposition to Pltffs'. motion for judgment notwithstanding the verdict,
08-06-76	Filed Pltffs'. affidavit & notice of motion to set aside the jury verdict & for a new trial, ret. 8-27-76.
08-06-76	Filed Pltffs'. memorandum of law in support of motion for a new trial.
08-12-76	Filed Pltffs'. reply brief in support of motion for judgment n.o.v.
08-24-76	Filed Deft's. (N.Y. Stock Exchange) memorandum in opposition to Pltffs'. motion for a new trial.
11-1-76	Filed memo end. on motion dated 7-14-76 . Motion denied. Lasker J. (mailed)
11-9-76	Filed memo end on motion dated 8-6-76. Motion denied . So ordered Lasker J. m/n
11-30-76	Filed notice of appeal to the USCA for Judg. of J. Lasker dated 11-9-76. m/n

A S

AMENDED COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

J. P. FOLEY, INC., JOHN P. FOLEY, JR., ANNE A. FOLEY and ANITA SALISBURY,

Plaintiffs,

-against-

NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE,

Defendants.

---

71 Civ. 2987

MEL

AMENDED COMPLAINT

PLAINTIFFS DEMAND TRIAL BY JURY

FILED
SEP 13 10 42 AM '71
U.S. DISTRICT COURT
S.D. OF N.Y.

Plaintiffs, for their complaint herein, respectfully allege, all upon information and belief, except for the allegations of Paragraphs "2" and "11" through "15", which are alleged upon knowledge.

JURISDICTION

1. The basis for jurisdiction of this Court is 15 U.S.C. 78a et seq., (the Securities Exchange Act of 1934) and Title 28 U.S.C. Sections 1331 and 1337. The action arises under and pursuant to the laws of the United States. Each of the plaintiffs' claims exceeds $10,000 in amount.

ALLEGATIONS COMMON TO ALL COUNTS

2. Plaintiff J. P. FOLEY & CO., INC., is a New York corporation.

3. Defendants New York Stock Exchange and American

Stock Exchange, each now New York State not-for-profit corporations, were unincorporated associations of brokers and dealers engaged in the purchase and sale of securities to the public and were and are registered as National Security Exchanges pursuant to Section 6 of the Securities Exchange Act of 1934.

4. Blair & Co. Inc., ("Blair") was and is a New York based stock brokerage concern. It engaged in the stock brokerage business and at all times pertinent hereto was a member of the New York Stock Exchange and the American Stock Exchange and subject to their respective constitutions, rules, regulations and by-laws, and had agreed to comply therewith.

5. The defendants were charged under the Securities Exchange Act with the duty of policing the financial responsibilities of their members and assuring compliance with the Federal Securities Laws and with the defendants' own constitutions, by-laws and regulations. The American Stock Exchange undertook to satisfy such duty by delegating the enforcement thereof to the New York Stock Exchange which thereafter acted as the agent of the American Stock Exchange for such purpose.

6. Blair and the defendants had advised the public and inserted advertisements in newspapers and issued press releases to the effect that Blair was a member of defendant Exchanges, and that the defendants required all their members to comply with the rules and regulations promulgated by them.

7. Among the aforesaid rules, it was provided that as a condition to being and remaining a member in the defendant Stock Exchanges, Blair was required to and did agree to obey the rules of the said defendants, among which was the right of such defendants to institute procedures and secure authority from Blair to require Blair to submit to periodic examinations by the defendants, their officers, agents and employees, of Blair's books, records, methods of doing business, and all other matters involved in the operation of Blair. The defendants on their part undertook to periodically examine and supervise their members, including Blair, so that said members at all times would remain solvent, and would obey all rules, regulations and applicable statutes.

8. Defendants, particularly the New York Stock Exchange, permitted customers of their members to subordinate their accounts to creditors of the members (here "Blair") under terms and conditions fixed or approved by said Exchanges. Such subordination permitted the members to consider such customer accounts as part of the members' "capital" under the defendants' rules. Such subordination was usually effected by means of a so-called collateral note and other documents, all required to be approved in advance by defendants.

9. At all relevant times and at the time of the transactions alleged below, the defendant New York Stock Exchange

maintained and publicized a security fund claimed as available to safeguard the customers of member firms against losses by reason of the financial instability of such member firms.

10. To the extent that Blair could attract additional subordinated accounts, the amount of the New York Stock Exchange Security Fund required to be held available against Blair customer losses would be and was lessened.

11. In April 1970, the plaintiffs transferred their security and other accounts containing marketable securities of the then value of approximately $3,000,000 traded on the New York Stock Exchange and American Stock Exchange to Blair and entered into agreements which subordinated them to creditors of Blair in accordance with the terms of a collateral note of the type aforedescribed which provided for the sale of said securities under certain circumstances at the option of and by Blair for plaintiffs' account, but for the benefit of Blair and the retention by Blair of the proceeds of such sale, in return for which transfer and note plaintiffs were to receive interest at periodic intervals on the then current market value of their securities and, on any sale of the securities by Blair, debentures issued by Blair in exchange for the then market value of such securities.

12. Blair received and retained the securities deposited with it by plaintiffs; they were ultimately sold

by Blair to pay creditors and for operating expenses, or retained to pay its creditors, and Blair now claims that all plaintiffs are entitled to are Blair debentures, which in fact were and still are valueless.

13. Blair has been adjudicated a bankrupt in the United States District Court, Southern District of New York, and Blair has in turn filed a cross-petition for an arrangement with its creditors under Chapter XI of the Bankruptcy Act in the same Court.

14. Plaintiffs' securities so sold by Blair or retained by it have increased in value. If plaintiffs had the full and unrestricted control of said securities, plaintiffs would have retained them and benefited from said increase in value.

15. Plaintiffs have been damaged in the acts and transactions of the defendants alleged hereafter in the sum of $4,000,000 representing the original value of their securities when transferred and any increase in their market value to date and during the pendency of this action.

FIRST COUNT AGAINST BOTH DEFENDANTS

16. Plaintiffs repeat and reallege each and every allegation of Paragraphs "1" through "15" inclusive.

17. Plaintiffs made the said agreement, note and transfers of securities, relying on the defendants' compliance with their statutory duties alleged in Paragraph "5" and that

except for violations of the New York Stock Exchange's "Net Capital Rule" (Rule 325) which plaintiffs' investment was intended to cure, Blair was in compliance with defendants' rules and regulations, including without being limited to the accuracy and up-to-dateness of Blair's record keeping and accounting procedures and its customers' accounts.

18. In fact, for a long time prior to and at the time of the said agreement, note and transfer of securities, defendants, negligently and carelessly and in complete disregard of their obligations to plaintiffs and the investing public, had failed to examine, supervise and police Blair's compliance with defendants' rules and regulations, had permitted Blair's books, records and accounts to become and remain inaccurate, incomplete and impossible to audit and reconcile, and Blair's continued solvency or insolvency impossible to determine.

19. Defendants' said violations of their statutory duties caused the damage to plaintiffs alleged in Paragraphs "12", "14" and "15".

SECOND COUNT AGAINST BOTH DEFENDANTS

20. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs "1" through "15" and "17" and "18".

21. The documents designed to accomplish the subordination of the plaintiffs' accounts contained certain pro-

visions included among which was the representation that at the time of execution of the agreement "Blair" was not in violation of any of the requirements of the defendants, and in said documents "Blair" further represented and warranted that at the time of subordination of their accounts by plaintiffs and as a result thereof, "Blair" would be in compliance with all the rules and regulations of the defendants.

22. Defendant New York Stock Exchange knew the course and content of the negotiations between plaintiffs and Blair and various drafts of all of the subordination agreements and related documents were submitted to the defendant New York Stock Exchange for its approval before they were signed.

23. The defendant New York Stock Exchange stood to benefit from the additions to Blair's capital by reason of plaintiffs' said subordinations.

24. To induce plaintiffs to transfer their securities and execute the aforesaid collateral note and other agreements, defendant New York Stock Exchange failed to disclose at least the following material facts:

a. That defendant New York Stock Exchange had failed to properly police, supervise and compel Blair's compliance with defendant's rules and regulations;

b. That Blair would remain in violation of the net capital and other rules and regulations of defendants notwithstanding plaintiff's said subordinations;

c. That Arthur Young & Company, Blair's auditors, had reported to defendant New York Stock Exchange that Blair's customers accounts could not be reconciled, that more than $3,000,000 worth of securities belonging to Blair and/or its customers could not be found or traced and were missing and that, in a financial statement dated September 26, 1969 but issued December 5, 1969, said Arthur Young & Company had failed to set aside a proper reserve for the potential large liability arising out of such inability to reconcile the accounts and locate the securities, and for the additional overhead and administrative expense occasioned thereby;

d. That Blair's accounts and records were not in balance or kept in proper order, could not be and had not been reconciled, and that defendant New York Stock Exchange either knew that Blair was and would continue to remain insolvent, or did not know whether or not Blair was and would continue to remain insolvent, and that it had been made aware of facts which reasonably indicated that Blair was or would shortly become insolvent.

e. That most of the representations and warranties made by Blair to plaintiffs were untrue.

25. Said acts, omissions and transactions of defendant New York Stock Exchange constituted fraud and deceit, the use of devices, schemes or artifices to defraud, and the engagement in acts, practices and courses of business which

operated as a fraud upon plaintiffs, and in addition, the New York Stock Exchange participated in, aided, abetted, and with knowledge, benefited from the commission of such violations by Blair, its officers and directors.

26. Defendants and Blair utilized the telephone, mails and other instrumentalities of commerce to effect the aforesaid acts, transactions and practices, and the sales by Blair of plaintiffs' securities were effected on National Stock Exchanges.

27. In making their said transfers, deposits and subordinations, plaintiffs relied on the factual picture of Blair's good standing and compliance as a member of defendant New York Stock Exchange, and particularly in the light of the above alleged non-disclosure of material facts. Plaintiffs would not have made said transfers, deposits and subordinations if they had known that Blair was and would remain insolvent and otherwise in violation of defendants' constitutions, by-laws, rules and regulations, that Blair's records and accounts could not be balanced or reconciled, and if they had known of defendants' failures to police Blair's activities and assure such compliance.

28. In fact, defendant New York Stock Exchange had failed to supervise Blair, failed to properly examine its books, records and accounts, failed to properly supervise its business and methods of doing business and permitted Blair to operate as

it had been operating for a long time in violation of defendants' rules and regulations at the time plaintiffs subordinated their accounts, and in fact Blair was insolvent and in violation of defendant's net capital rule when plaintiffs made said subordinations, and said subordinations did not cure either the insolvency or the net capital violation, and Blair's books, records and accounts could not be balanced or reconciled, all of which defendant New York Stock Exchange knew or should have known.

29. Defendant New York Stock Exchange's said acts, omissions and transactions caused the damage to plaintiffs alleged in Paragraphs "12", "14" and "15".

THIRD COUNT AGAINST BOTH DEFENDANTS

30. Plaintiffs repeat and reallege each and every allegation of Paragraphs "1" to "15" inclusive, and "17" and "18".

31. After making the transfers alleged in Paragraph "5" the plaintiffs maintained their securities on deposit with Blair and permitted the said deposits to continue, believing that the defendants were fulfilling and would continue to fulfill their responsibilities under the law as aforesaid.

32. After plaintiffs had made their said subordinations defendants failed to comply with their statutory duty to supervise Blair and to properly examine its books, records and accounts, permitted Blair to operate for a long period of time while it was insolvent and otherwise in violation of defendants'

rules and regulations failed to investigate said violations or failed to investigate them properly, or having knowledge of said violations, permitted them to continue knowing that plaintiffs were continuing to subordinate their accounts in reliance on defendants' performance of their obligations under Section 6 of the Securities and Exchange Act.

33. Plaintiff's agreement with Blair permitted them to terminate their subordinations and require delivery of their securities upon the occurrence of certain events of default.

34. If the defendants had complied with their obligations to police the financial responsibility of Blair, and had insured that Blair's activities, financial condition and operations were such as to entitle Blair to remain in good standing as a member firm of the defendants, and had conducted proper surveillance of Blair's financial status and its compliance with the constitution, by-laws, rules and regulations of the defendants, Blair's violations would have been made public, and Blair would have been caused to cure such violations, or suspend operations, and plaintiffs would have become aware of said events of default and would have required redelivery of their securities free of said subordinations.

35. By reason of the foregoing plaintiffs have sustained at least the damages alleged in Paragraphs "12", "14" and "15".

FOURTH COUNT AGAINST BOTH DEFENDANTS

36. Plaintiff repeats and realleges each and every allegation contained in Paragraphs "1" through "15", "17", "18", "28" and "31" through "34".

37. Prior to the times of the acts and transactions alleged herein, each defendant had applied to the Securities and Exchange Commission to be registered as a National Securities Exchange and had thereafter made certain amendments to said applications.

38. In the aforesaid applications and amendments thereto, each of the defendants agreed to comply with and enforce, insofar as it was within its powers, compliance by its respective members with the provisions of the Securities and Exchange Act of 1934 and any amendments thereto and any rule or regulation then promulgated or to be promulgated thereafter under said Act.

39. The said agreement's purpose was the delegation by the Securities and Exchange Commission to the defendants of the statutory imperative imposed by the Securities and Exchange Act of 1934 that fair dealing in securities be assured to protect and benefit investors and other members of the public and each of said defendants' agreements and amendments thereto were executed by each defendant as a condition of and in consideration of said defendant becoming and remaining registered as a National Securities Exchange and by the Securities and Fxchange Commission, for the purpose of

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performing and effectuating the statutory and regulatory scheme imposed by the Securities and Exchange Act of 1934.

40. To implemer 'r aforesaid agreements, each defendant adopted and there remained in force, until the happenings of the acts and transactions alleged herein, constitutions which respectively vested in the Board of Governors of each defendant all powers:

A. necessary for the government of such Exchange and the regulation of the business conduct of its members, member firms, allied firms and member corporations;

B. necessary for the adoption of such rules and regulations as each Exchange deemed necesary or proper, including rules (i) for the continuance of members, member firms, allied firms and member corporations as members; (ii) for protection of the interests of members, member firms, member corporations and of other persons in such member firms, allied firms and member corporations; (iii) for regulation of the operations of members, allied members, member firms, and member corporations and the exercise of general supervision over their activities and operations including without being limited to the business conduct and financial condition of such members, allied firms and member firms and member corporations; (iv) for supervision over corporate arrangements of such member corporations; (v) for enforcement of

sanctions to insure that if any of its members, member firms, allied firms, or member corporations should fail to comply with such constitutions, rules or regulations, or with the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder, or should fail to comply with principles or standards of fair dealing in securities, and in the protection on investors, the right to expel or suspend said violator from membership on the Exchange.

41. The aforesaid agreements, while made in consideration of the defendants becoming and remaining registered as National Securities Exchanges by the Securities and Exchange Commission, were each made for the benefit of investors and members of the public dealing or intending to deal with or engaging in security transactions with the said members, member firms, allied members and member corporations.

42. The acts and transactions alleged in the First, Second and Third counts above alleged constituted breaches by each of the defendant of the aforesaid third party beneficiary contracts each made for the benefit of a class of persons which included the plaintiffs.

43. By reason of the above alleged breaches of contract, the plaintiffs were damaged at least in the amounts alleged in Paragraphs "12", "14" and "15".

WHEREFORE, plaintiffs ask judgment against the defendants for the damages alleged above, with interest, together with the costs and disbursements of this action.

MILBERG & WEISS

By _____
Lawrence Milberg
a Member of the Firm
Attorneys for Plaintiffs
Office & P.O. Address
2 Pennsylvania Plaza
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(Verified)

JUDGMENT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- x

J. P. FOLEY, INC., JOHN P. FOLEY, JR., ANNE A. FOLEY and ANITA SALISBURY,

Plaintiffs,

-against-

NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE,

Defendants.

71 Civ. 2987 MEL

JUDGMENT

- x

The issues in this action having been brought on regularly for trial before the Honorable Morris E. Lasker, United States District Judge, and a jury, on May 24, 25, 26, 27, June 1, 2, 3, 7, 8, 9, 10, 11, 14, 15, 16 and 17, 1976; and the Court having directed a verdict in favor of defendant American Stock Exchange, Inc. on all claims and having directed a verdict in favor of defendant New York Stock Exchange, Inc. on all claims based on Rule 10b-5 or allegations of fraud and the claim seeking rescission; and the jury having rendered a verdict on all remaining claims in favor of defendant New York Stock Exchange, Inc.; and plaintiffs having moved by notice of motion dated July 14, 1976 for judgment notwithstanding the verdict and by notice of motion served August 5, 1976 for a new trial; and the Court having denied said motions by orders filed on November 1, 1976 and November 9, 1976, respectively;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendant New York Stock Exchange, Inc. is awarded judgment dismissing this action on the merits and that defendant New York Stock Exchange, Inc. recover of plaintiffs its costs of action; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant American Stock Exchange, Inc. is awarded judgment dismissing the action on the merits and that defendant American Stock Exchange, Inc. recover of plaintiffs its costs of action.

Dated: New York, N.Y.
December 8, 1976

/s/
Clerk of the Court

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

J. P. FOLEY & COMPANY, INC., JOHN P. FOLEY, JR., ANNE A. FOLEY and ANITA SALISBURY, Plaintiffs,	71 Civ. 2987 (MEL)
-against-	NOTICE OF APPEAL
NEW YORK STOCK EXCHANGE and AMERICAN STOCK EXCHANGE, Defendants.	

S I R S :

PLEASE TAKE NOTICE that the plaintiffs J.P. Foley & Company, Inc., John P. Foley, Jr., Anne A. Foley and Anita Salisbury hereby appeal to the Second Circuit Court of Appeals from the final judgment entered in the United States District Court for the Southern District of New York, on November 9, 1976, which was entered pursuant to a jury verdict rendered on June 16, 1976, and that plaintiffs appeal from each and every part of said judgment, as well as from the whole thereof.

Dated: New York, New York
November 29, 1976

Yours, etc.,

HAWKINS, DELAFIELD & WOOD

By _____
A Member of the Firm

Attorneys for Plaintiffs
67 Wall Street
New York, New York 10005
(212) 952-4700

TO: MILBANK, TWEED, HADLEY & McCLOY
Attorneys for Defendant New York
Stock Exchange
1 Chase Manhattan Plaza
New York, New York 10005

LORD, DAY & LORD
Attorneys for Defendant American
Stock Exchange
25 Broadway
New York, New York 10004

A 27

AMENDED NOTICE OF APPEAL

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

J. P. FOLEY & COMPANY, INC., JOHN P. FOLEY, JR., ANNE A. FOLEY, and ANITA SALISBURY,

Plaintiffs,

-against-

NEW YORK STOCK EXCHANGE, and AMERICAN STOCK EXCHANGE,

Defendants.

Docket No. 76-7600

71 CIV 2981 (MEL)

AMENDED NOTICE OF APPEAL

S I R S :

PLEASE TAKE NOTICE that the above-named plaintiffs hereby amend their appeal, previously filed on November 30, 1976, to include an appeal of a final judgment entered in the United States District Court for the Southern District of New York on December 7, 1976 and which was entered pursuant to a jury verdict on June 17, 1976, and that plaintiffs appeal from each and every part of said judgment as well as the whole thereof.

Dated: New York, New York
December 21, 1976

HAWKINS, DELAFIELD & WOOD

By: _____
A Member of the Firm

Attorneys for Plaintiffs
67 Wall Street
New York, New York
(212) 952-4700

TO: MILBANK, TWEED, HALDEY & McCLOY
Attorneys for Defendant New York
Stock Exchange
1 Chase Manhattan Plaza
New York, New York 10005

LORD, DAY & LORD
Attorneys for Defendant
American Stock Exchange
25 Broadway
New York, New York 10004

THE COURT: Mr. Fried?

MR. FRIED: I call Dr. Foley.

J O H N P . F O L E Y , J R., called as a witness in his own behalf, being first duly sworn, testified as follows:

THE COURT: Dr. Foley, as you undoubtedly noticed, this is a fairly large room and it is necessary for you to keep your voice up for everybody to hear you.

THE WITNESS: Okay.

THE COURT: Mr. Fried.

DIRECT EXAMINATION

BY MR. FRIED:

Q Dr. Foley, are you one of the plaintiffs in this case?

A I am.

Q What is J.P. Foley & Company, Inc.?

A It is a firm of consulting industrial psychologists.

Q Who is Anne A. Foley?

A She is my wife.

Q And who is Anita Salisbury?

A She is my secretary and assistant at J.P. Foley & Company.

Q Have I named all of the plaintiffs in this action?

A If you include the company itself, yes.

Q Dr. Foley, what is your present occupation?

A I am a consulting industrial psychologist.

Q What was your education?

A I hold an undergraduate degree is psychology from Indiana University, a masters degree in psycholcgy from Columbia.

Q After your formal education, what was your business experience?

A Well, I suppose you could say my business experience, or my work experience, began while I was still in graduate school, or even as an undergraduate. I was assistant at Indiana University in psychology for three years, my sophmore, junior and senior years.

When I came to Columbia, I was an assistant at Barnard College for a year or two in psychology. I then became an assistant in animal psychology in the graduate school of Columbia, and for one year I was a lecturer at Barnard College in psychology, also while I was still working on my doctorate.

Finally, while I was still at Columbia, I became a research associate to Dr. Franz Boaz, head of the

jgjw 3 J. Foley - direct

Anthropology Department at Columbia, and I worked with Dr. Boaz for a couple of years.

I then went to Washington, D.C. to become an instructor in experimental psychology at the George Washington University, and I was an instructor there and head of the experimental laboratory for about two or three years.

I then became an assistant professor, with essentially the same duties. And while I was still teaching at George Washington, I began doing a little part-time consulting work for the Capitol Transit Company. This was a utility which was privately owned. It operated all of the busses and streetcars in Washington and environment and I did some consulting work for them in the labor relations field on a part-time basis for, I would say, about a year or thereabouts.

Then after I had taught at George Washington for some seven or eight or eight and a half years, I came to New York. This was during World War II, around 1944, I would guess, and I took a job as a staff member of the Industrial Division of the Psychological Corporation in New York City. This was the first group of applied psychologists to have set up and operated a consulting organization in this country. It was established in 1921

by some eminent psychologists, some of whom had been my professors at Columbia, such as Professor Thorndike and Professors Woodworth and Poffenberger.

I was on the staff of the Industrial Division of Psychological Corporation for about two or three years, then became associate director of the division, and a few years later director of the division and a vice-president of the corporation.

And during that time the work that we did for clients was personnel in nature. It included job descriptions or specifications, work on selection programs, employee selection programs, evaluation of applicants and current employees, employee attitude and morale surveys, and a little training, interview training and supervisory training. Those were the major activities in which my division was involved.

And I left the Psychological Corporation around '55 or '56 or thereabouts to set up my own organization, J.P. Foley & Company, which is one of the plaintiffs in this action, and I've been its president and the primary psychologist working in the firm since that time.

Q Have you ever been in the securities business?

A No, sir.

Q You talked about consulting services. What

did they consist of, Dr. Foley?

A All of the consulting services in which I have been engaged since I've been in the consulting field, which dates back to prior to World War II, all of these have beenin different fields of, shall we say, personnel and employee relations, and specifically these services include work ontesting and interviewing and other aspects of an overall selection program, the training of interviewers, the validation of testing programs, the use of tests and interviews in the evaluation of personnel, the conduct of employee and attitude morale surveys.

That, I think, about exhausts the major areas of mywork.

Q Mr. Brooks stated that you had been involved in distressed financial situations.

Do you recall that in his opening statement?

A No, I don't. I would think that most of the companieswith which I've worked have been in the upper segment of the corporate population, if I may use that term. By that I mean that --

THE COURT: Excuse me, Dr. Foley, but I don't know whether --

Q I don't know if you understood what I was saying.

jgjw 6 J. Foley - direct

Mr. Brooks said that you invested in distress situations.

A I beg your pardon. I thought he was talking about my client companies.

THE COURT: No.

THE WITNESS: Perhaps my answer is partially relevant, your Honor, because a few of the companies in which I have invested over the years have been client companies.

THE COURT: But I think the question is directed to the kinds of investments that you have made.

THE WITNESS: Yes, yes.

No, to my knowledge, I have never invested in a distressed company.

Q Dr. Foley, you transferred a number of securities to Blair & Company between April and July of 1970, is that correct?

A That is correct, sir. I think most of them were transferred in April and May.

Q Were any of those securities, as far as you know, securities which you had bought in a distress situation?

A Not to my knowledge. I would not be able to pinpoint any that would fit into that category.

Q Dr. Foley, when for the first time did you meet any representative of Blair & Company?

A It was either late January or very early February 1970.

Q Who was the person in Blair & Company that you saw at that time?

A Mr. James Rush, the treasurer.

Q Prior to the latter part of January 1970 or the early part of February 1970, did you have any business whatsoever with Blair & Company?

A No, sir.

Q Did you know any of the personnel of Blair & Company?

A I knew one person.

Q Who was that person?

A Mr. Vanderbilt.

Q When did you meet Mr. Vanderbilt?

A I do not know the exact year, but to the best of my recollection it would have been in the sixties, the very early sixties or very late fifties.

Q Was Mr. Vanderbilt a social friend of yours or a business acquaintance?

A No. He was a client, or at least the company in which he was then working was a client of mine, Taylor,

jgjw 8 J. Foley - direct

Wharton Iron & Steel. It was a small steel company headquartered in New Jersey.

Q How often did you see Mr. Vanderbilt?

A I had only seen him on one or two occasions. I was then working at the Psychological Corporation, and he came in and talked with me about having us evaluate one or two people for him.

Q Other than Mr. Vanderbilt, whose acquaintance you made in 1960, did you know anybody else in Blair & Company?

A No. Prior to that time I had known no one at Blair.

Q Who introduced you to Mr. Rush in the latter part of January or the early part of February 1970?

A Mr. Luce.

Q What is his full name?

A Dudley Luce.

THE COURT: What is it?

THE WITNESS: Dudley Luce.

Q Do you recall the first time you met Mr. Rush?

A Yes.

Q Where did that meeting take place?

A In Mr. Rush's office.

Q Was Mr. Rush at that time employed by Blair &

Company?

A Yes.

Q In what capacity, if you know?

A He was treasurer.

Q Who accompanied you to Mr. Rush's office, if anybody?

A Mr. Luce and Mr. Feldman, Mr. Leonard Feldman.

Q Who is Mr. Leonard Feldman?

A He is an attorney.

Q Do you know where Mr. Leonard Feldman is now?

A I think he is in a hospital.

Q How long has he been in that hospital?

MR. REILLY: I object, your Honor.

THE COURT: Sustained as to how long he has been there.

MR. FRIED: This is going to explain his absence, because I would normally call him as a witness, your Honor.

MR. REILLY: I object to even counsel's comment on that, your Honor.

THE COURT: No, I don't know that he is unable to make such a comment. But I prefer to go into that later, after we have had a chance to discuss it.

Q Mr. Leonard Feldman was an attorney at that

time, is that right?

A That's right.

Q And who else was there?

A Mr. Luce, Mr. Dudley Luce.

Q Was anyone else present when you came to the offices of Blair & Company?

A You mean in the initial meeting, Mr. Fried?

Q Yes.

A No. Just the four of us.

Q To the best of your recollection, Dr. Foley, will you please state what was said on that occasion by you, by Mr. Rush and by Mr. Luce?

A Mr. Luce -- well, there were initial pleasantries, as one might anticipate in a case of this sort. Mr. Luce indicated to me, in the presence of Mr. Rush and Mr. Feldman, that he had been in contact, previous contact, with Mr. Rush and had learned that Mr. Rush was a long-term friend and acquaintance of his of many years standing, and that he had spoken to Mr. Rush about the possibility of my investing in a subordinated account, or at least subordinating securities in a subordinated account at Blair & Company.

Mr. Rush had indicated that they were interested in bringing in additional capital of this type into the

firm, subordinated capital, and said he would like very much to have a chance to meet me and at the proper time to have me meet his business associates at Blair & Company.

We also, as I recall on that first occasion, made a very quick trip through the various offices of Blair.

That, I believe, was just about it -- oh. Mr. Rush asked me if I could approximate the value of the securities that I was -- that I and my group were prepared to subordinatein a subordinate account at Blair. I told him that I had not calculated the value but that my best estimate would bethat they would be worth somewhere between two and three million dollars.

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Q Did you understand the term "subordinated loan" at that time?

A In general, yes, I did.

Q What in general did you understand the term to mean?

A I understood it to mean that one or more persons who were setting up subordinated accounts would enter into an agreement with Blair, let us say, or some other investment firm, because this was being done widely throughout Wall Street, and I guess still is, and that under that agreement the persons loaing the securities would be obligated to keep their securities on loan for a finite period of time, and they were thinking in terms of a two-year period, during which, unless other events occurred they could not be recalled; but that during this loan period the owner of the securities would have an opportunity to sell any one or more of them, but if he did, the resulting dollars would have to either remain in the firm, in the subordinated account, or be invested in another security which in turn would continue to remain in the subordinated account; and that certain other restrictions or provisions, let us say, could be incorporated into the agreement.

And finally that in return -- let me say one

other thing; and that the purpose of the firm's doing this was to use these securities as a basis for getting a loan at one or more banks, the money from which could be used in the normal course of the business, of the firm's business.

Q Dr. Foley, have you told us all of the conversation which took place, as far as you can recollect, on this first meeting with Mr. Rush?

A Yes. I would say that to the best of my recollection that was the essence of our initial meeting.

THE COURT: Dr. Foley, in answer to Mr. Fried's conversation, have you told us all the conversation, I don't doubt that you did. But what you just told us about a subordinated loan --

THE WITNESS: That was in response to his question about my --

THE COURT: I am making it clear to the jury. I just want to be sure I am right. That was not part of the conversation. That is what you answered Mr. Fried becaus he asked you what your understanding is.

THE WITNESS: That is right, your Honor.

Q Dr. Foley, Mr. Brooks in his opening statement said that you had negotiations with Hayden Stone prior?

A That is correct.

Q For how long a period did you negotiate with Hayden Stone, if you recall?

A To the best of my recollection, our negotiations with Hayden Stone began in the spring of 1969 --

Q The statement was further made --

A -- and continued until late summer or early fall, I would say October at the latest.

Q The statement was further made that because of onerous conditions you imposed, Hayden Stone was not interested, is that correct?

A That is not correct.

Q What was the reason why you broke off negotiations with Hayden Stone?

A I had a telephone call from Mr. Cambere, whose title at Hayden Stone was that of assistant chairman -- he had formerly been president. He had been the chief executive officer at Hayden Stone with whom I had been talking, and he called me, to the best of my recollection in August, it could have been in September, telling me on the telephone that he and other executives of Hayden Stone had visited some party or parties out west, in one of the western states, and had just got back to New York and had been able to get a very large amount of subordinated capital from those sources, and that they no

longer had any need for my capital.

The implication was that our capital was very small compared with their needs and with what they had been able to get out west.

Q Were you at any time told that because of any conditions you imposed on Hayden Stone they were not interested?

A I imposed no conditions on Hayden Stone. I imposed no conditions on Blair if by "imposing" you mean a one-way street.

Q Coming back to Blair & Company, you told us about the first meeting you had. When did you next meet with any representative of Blair & Company, if you can recall?

A Mr. Fried, my recollection of our discussions at Blair, which as I have testified began in late January or early February and ended, at least the major, crucial phases, on the late afternoon and early evening of April 3rd, apart from the initial meeting, which I have described to you, and apart from a few other meetings the nature of which I recall rather clearly, I am unable to distinguish in my own mind at this point in time, more than six years later -- I am unable honestly to distinguish in my own mind what happened at each meeting and when that meeting occurred and exactly what was said and

done at each separate meeting.

They sort of merge in my mind and in my recollection.

Q Dr. Foley, we have established that you first saw Mr. Rush either the latter part of January or the early part of February 1970.

A Yes, sir.

Q And have you signed the subordination agreements on April 3rd, late in the afternoon or evening?

A That is my recollection, sir.

Q In that period of time, that is, between the latter part of January 1970 and April 3, 1970, when you signed the subordination agreement, how many meetings, approximately did you have with representatives of Blair?

A I would have to give you a range, Mr. Fried. I would say the minimum would be seven or eight, the maximum would probably be 12 or 14, and if I had to pick a number I would pick somewhere in the middle of the range, let us say nine or ten or 11.

Q Without being able to tell us the precise date or the precise conversation, can you state what was the substance of the conversations you had with representatives of Blair? And please tell us who those persons were you talked to.

A Yes. First let me answer your second question first.

The people at Blair with whom I was negotiating, or talking, were Mr. Rush, the treasurer, Mr. Vanderbilt, the chairman of the board, Mr. Ramsey, the president, although Mr. Ramsey played a very minimal role in the actual discussions.

I met him on a few occasions. He was in on the discussion two or three times, but I would say his role was minimal in comparison with the role of Mr. Rush, Mr. Vanderbilt, Mr. Richardson. John Richardson was the attorney, or house counsel of Blair, and he played a very active role in a number of the discussions that I held with Blair.

I met Mr. Ireland once or twice prior to April 3rd but only to shake hands, and I had had no -- he had participated in none of our discussions, not a single one, and I had had no other contact with Mr. Ireland prior to April 3, 1970.

Q All right. Now, Dr. Foley, with that explanation --

A Those are the people with whom I talked.

Q Tell us the conversations that you had with those people in that period of time.

A Yes.

They explored in somewhat more detail the securitie that we were prepared to subordinate, and these were discussed in some detail. They asked me --

THE COURT: You mean the actual securities?

THE WITNESS: The actual security, yes. And they asked me if I could get a list, you know, prepare and submit a list, which I did, to them.

I also indicated that one of these securities, namely the one that -- namely Richardson Company, which was a Chicago-based company, was -- that these securities had a restriction by virtue of the fact that they were the result of an exchange of stock between Richardson and a company in which I had previously invested, namely Hercules Packing Company, located in a suburb of Buffalo, New York.

And Mr. Richardson, the attorney at Blair, asked me at some length about that and I told him about it.

THE COURT: Just by chance the two names are the same, I take it?

THE WITNESS: That's right. There is no relation. Purely coincidental.

Our discussion then began to be directed towards the various concepts that would be built into the agreements into which I would enter. I indicated a while ago that what my understanding was in respect to the meaning

of a subordinated account. I was told that in exchange --

MR. REILLY: Excuse me for interrupting. May I request that the witness, when he says something like "I was told," if it is at all possible to indicate by whom.

THE COURT: I agree. If it is at all possible. But he frankly acknowledged the limitations of his own recollection.

THE WITNESS: That's right. I would say most of the technical information was supplied by John Richardson, the house counsel of Blair.

THE COURT: And what were you going to say about you were told?

THE WITNESS: I was told by him and by Mr. Vanderbilt and by Mr. Rush too, as well, in this regard, that Blair had issued stock options and that they were prepared to issue stock options in payment to us for the subordination of these securities, the loan of these securities.

THE COURT: Im I correct that a stock option, within the meaning of your proposed agreement, and I believe --

THE WITNESS: In the stock of Blair & Company.

THE COURT: That meant that you would have the right to buy stock of Blair under certain circumstances.

THE WITNESS: At a certain price at some future time. That's right.

And that we would also receive three per cent of the market value of the securities per year, three per cent per year of the market value of the securities that were deposited.

And I was told that this was their characteristic percentage.

THE COURT: That was, in effect, interest? Is that what you are saying?

THE WITNESS: That's right. And that they did this, this was their normal practice, and that they would propose to follow the same practice in our case.

And we accepted that figure, as events subsequently show.

Then the remaining discussions were devoted primarily to the hammering out of certain concepts that were to be built into the agreements into which I entered, and one of these concepts was one which has been mentioned here earlier that afternoon, namely the formulation of what might be called a protective cushion under our investments.

And my understanding of that, and the understanding I arrived at in discussions with Mr. Rush and Mr. Richardson

and Mr. Vanderbilt, was that when the equity capital of Blair fell, or decreased, by 50 per cent or more, when it reached that 50 per cent decrease point, we would have an opportunity to w ithdraw our securities.

THE COURT: That would take the 50 per cent below what it was at the time that you closed.

THE WITNESS: That's right. That was my understanding.

Or, secodnly, if the losses -- that is, the day in, day out, the operating losses of Blair -- were to reduce that capital by 50 per cent -- perhaps I didn't make it clear in regard to the first loss.

The first loss against which protection was to be granted related to a loss in equity capital resulting from a deterioration in the market price of the stock. This is something to which Mr. Brooks referred indirectly in his earlier remarks. Stocks were dropping during that period, as he indicated.

And the second type of loss against which we were to be protected was a loss resulting from operating expenses. Again, this is something to which Mr. Brooks referred when he referred to rents and the high cost of computer programs and personnel costs and maintaining offices, et cetera. Those would be operating losses.

And that when either of these events or any combination of these two events were to occur such that Blair's capital would be reduced by 50 per cent, our securities were to be returned to us.

THE COURT: Returned to you or you would have the right to withdraw it?

THE WITNESS: Well, we would have the right to ask for their return, to request their return.

THE COURT: Mr. Fried, I don't like to interrupt you, at a rather interesting point in the testimony, but I am afraid I have to ask you -- I have other engagements.

Ladies and gentlemen, I think we are off to a good start. You are free to leave at this time with my admonition again not to discuss the case when you get home tonight except to tell your families that you will be occupied for a while.

We will start tomorrow morning at 10:00 o'clock. I may be a few minutes late because I have a matter that I have to dispose of in court at that time, but it should not take more than a few minutes. So I ask you please to be in the jury room by 10:00 o'clock.

If you live at nay distance, please allow yourselves an extra margin of time to travel because

* * *

certain percentage of your capital.

Although Rule 325 required this relationship or ratio it is in question in this trial to be less than 20 to 1, or 2000 percent, it also provided that the Exchange can make an exception for any particular member firm or could require any particular member firm to have a lower capital ratio.

Thus, the Exchange could in effect make it tougher or easier for a member firm under the net capital rule as it was written -- I am not suggesting that the Exchange could do that capriciously. I am just suggesting that the Exchange had some discretion to decide whether the rule had to be applied as written or whether for some purpose there should be a reasonable variation.

Ladies and gentlemen, I hope that enables you to understand the discussion.

Are you ready to go with Dr. Foley?

Dr. Foley, will you resume your seat, please.

J O H N P . F O L E Y , resumed the stand, having been previously sworn, testified further as follows:

DIRECT EXAMINATION CONTINUED

BY MR. FRIED:

Q Dr. Foley, when we adjourned last night we

were talking about the period between the first time you met at Blair's office and April 3rd, the time you closed, and focusing your attention on that, you started to tell us about the conversations you had with various employees, representatives, agents and others at Blair & Company.

Now, will you continue and tell us in that same time frame what other conversations or event took place in that period of time.

A Well, as I indicated yesterday most of the discussions were held with Mr. Rush, the treasurer, Mr. Vanderbilt, the chairman, and Mr. Richardson, the attorney they employed at Blair, although I had met one or two other members of the firm, as I indicated.

Fairly early in the course of these meetings, Mr. Rush indicated that Blair had a books and records problem, that is, a problem in maintaining the accuracy of the account, client or customer account and other records in the firm, and he said that this difficulty was common in Wall Street at the time as I believe Mr. Brooks referred in his comments yesterday.

He also indicated -- Mr. Rush indicated that Blair's problems in this area resulted from two major causes: First, the acquisition of a Pacific Coast investment firm, namely, Schwabacher & Company, which Blair

had acquired sometime in 1969, the preceding year, and, secondly, that these books and records problems resulted from conversion to the so-called Midwest system, and he indicated that this state of affairs wasn't unusual or wasn't unexpected, because whenever mergers occur, certain ensue or result, and whenever a conversion to a new computer-type system is made, it is a rather costly process.

In fact, he indicated that sometimes when a conversion of this sort occurs the company will maintain the former system and the new system in paralle, concurrently, for a period of several months while they are making the transition from the old system to the new system. This obviously increases the cause.

When we discussed the prospects for overcoming these problems, he was very optimistic, and he said that Blair had hired a consulting firm that specialized in this sort of activity. By that I mean the conversion to the Midwest system, and that in addition to the employment of that consulting firm, they had hired an individual named George Morpurgo and that Mr. Morpurgo had come into Blair only recently -- by that I mean only a short time prior to our discussion, and I assume that the time was sometime early in 1970 -- and that Mr. Morpurgo was an expert in the so-called Midwest

system and that he had already made inroads in turning the situation around, namely, in overcoming the difficulties, the books and records problems.

Mr. Rush, either on that occasion or on another occasion, indicated that Blair at the time of our discussion, in the spring of 1970, Blair was losing money on a day to day operating basis. He indicated that they at one time, prior to the acquisition of Schwabacher, had been a very profitable company or firm but that at the time of our discussions Blair was, as we say popular, in the red in terms of their weekly or monthly operating statements, but he indicated that the situation was turning around, and he said that to the best of his ability to predict, by May 1st of 1970 they would be in the black.

THE COURT: Do you remember how early or how late he made that statement?

THE WITNESS: My best recollection would be that he made that statement in around the middle of February.

A (Continuing) And he said that as treasurer of the company he felt that they would be in the black by May 1st, and by June 1st for sure, for certain.

Somewhere in our discussions, again around the

same time, your Honor, as I could best place it, Mr. Rush indicated that Blair was in the grey zone with respect to capital compliance with Rule 325 of the New York Stock Exchange, and from what he said, although he wasn't very specific in this regard, in terms of just how far out of compliance they were in that point in time, nevertheless I felt --

MR. REILLY: As the continuing the answer, I don't object to what he said so far, but as to what was felt.

THE COURT: Yes. That is what I thought you objected to.

Do not tell us what you felt, Mr. Foley.

THE WITNESS: Am I allowed to say what my thinking, my opinion was at the time?

THE COURT: I don't think you were asked what your opinion was. We are just interested in the event.

Q Mr. Foley, just tell us what was said at this time. Your state of mind --

THE COURT: He told you that Mr. Blair was in the grey zone.

THE WITNESS: With respect to capital compliance. By that I mean compliance with the net capital rule of the New York Stock Exchange.

A But he also said that with the deposit of our securities, they would be in full compliance.

end t1

THE COURT: In other words, if he is out of the grey zone.

THE WITNESS: That is right, sir and he indicated their willingness to make that part of one of the agreements. In other words, that warranty, according to my recollection, he said was to be incorporated into one of the agreements that we were to sign with Blair.

THE COURT: You mean the warranty that your securities --

THE WITNESS: The deposit of our securities would put them into compliance, that's right, your Honor.

And it is my recollection that that was incorporated in one of the agreements.

In one of the discussions in Mr. Vanderbilt's office, at which I think Mr. Rush was present for part of the time but not all of the time, and this was one of the few discussions which I had at some length with Mr. Vanderbilt, and I know Mr. Ramsey joined us briefly on that occasions, Mr. Vanderbilt gave me several documents. He sent out for one or two of the documents, so that the person who brought them in might have been Mr. Rush or Mr. Richardson.

These documents included several things. First there was a folder, a tripartite, three section

folder, on one side of which was a certified statement, financial statement, relating to the condition of Blair & Company as of sometime late in 1969, according to my best recollection.

On the other side of that folder there was a letter, sort of a public letter, written by Mr. Vanderbilt, perhaps with also Mr. Ramsey, the president, although I'm not sure.

Q Dr. Foley, I don't mean to interrupt. I have these documents. We are going to offer them. So, rather than explain them, will you continue on with any other discussions?

A I wanted to make one point in that connection, Mr. Fried, that in this letter to the public --

MR. REILLY: I beg your pardon, your Honor. But I think the witness should respond as his counse has requested. I think it would be, expeditious.

THE COURT: Aside from that, were you going to tell us what the contents of the letter are?

THE WITNESS: Mr. Vanderbilt had made a statement, your Honor --

THE COURT: If you were going to tell us what the contents of the letter are, the letter itself is going to be in evidence and that is the best evidence of it.

Q Is that a comment that Mr. Vanderbilt made to you?

A Yes.

THE COURT: As to the letter, you mean?

THE WITNESS: Yes, sir. That's why I was going to say it.

THE COURT: Okay.

THE WITNESS: Mr. Vanderbilt said that he had great plans for Blair and that the future of Blair was very bright, and you will see in the letter he makes this statement.

On that same occasion he said he wanted me to meet a man next door to his office, a man named Dr. Haberle. I think he spells his name H-a-b-e-r-l-e, although I'm not a hundred percent sure of the spelling.

He said Dr. Haberle was a professor in the School of Business at Indiana University. This is the school at which I got my undergraduate degree. And he said he was sure that Dr. Haberle and I would have a number of acquaintances in common on the campus of Indiana University in Bloomington, as indeed we did.

And he brought Dr. Haberle in and introduced him as the man who was running another organization that was affiliated with Blair. This we popularly referred to

as CMA. These letters mean Capital Management Corporation.

I think, although I never saw the charter of Capital Management, I was given to understand that Mr. Vanderbilt --

MR. REILLY: I object, your Honor.

Q Is this the conversation?

A What I was told.

THE COURT: Told by whom?

THE WITNESS: By Mr. Vanderbilt.

THE COURT: All right.

MR. REILLY: I still object because I don't even know what question the witness is now responding to.

THE COURT: I think it would be better for us all if you could ask narrow questions and if Dr. Foley would answer the narrow questions.

MR. FRIED: These are the conversations in that very limited period of time, and I think we are at the end of it.

THE COURT: All right, if you are at the end of it.

You were told?

THE WITNESS: I was told by Mr. Vanderbilt that he, Mr. Vanderbilt, was chairman of the board of Capital Management but that Dr. Haberle was the operating

head of the business.

THE COURT: All right.

THE WITNESS: They told me about the nature of the business of CMC, and that was the management of funds, capital resources, of individuals who were customers or clients of that firm, and they gave them tax advice and they apparently suggested that these monies be invested in certain things.

And they gave me, Mr. Vanderbilt gave me, a booklet, illustrated booklet, almost a promotional piece, I would say, which described the activities of CMC and pictures some of its activities.

Q Dr. Foley, do you recall any other conversations in that period of time? The period of time I refer to is the first time you met Mr. Rush and the April 3rd meeting.

A If I may make one other point, Mr. Fried, I was given one other piece of paper by Mr. Vanderbilt -- I beg your pardon, two more pieces of paper -- on the occasion of that discussion in his office. One was a reprint from a business magazine relating to Blair and its future, illustrated with a picture of Mr. Vanderbilt, and the other piece of paper I was given was a mimeographed or photolithed one or two page piece of paper describing

the history of Blair.

The other meetings that I recall in the period prior to the closing, but not including the closing, related to the continuing future of Blair as being bright.

For example, Mr. Vanderbilt or Mr. Luce, one or the other, I don't recall which, sometime in February, around the middle of February, told me that Blair was expanding, they were opening a new office in the south somewhere. I believe it was in Tennessee, but I'm not sure. I think it was Nashville or Chattanooga. In fact, at the time they mentioned this, one of them gave me a reprint -- I beg your pardon, not a reprint, a tear sheet from a Wall Street Journal, which had a big ad advertising the opening of this Blair office.

Other meetings that we had dealt with the content of the material that was to be incorporated into the so-called option and collateral agreements, and we agreed --

THE COURT: The option agreement with you and the collateral agreement with you?

THE WITNESS: Between me --

THE COURT: And Blair?

THE WITNESS: That was the point I was going to make, your Honor. There were to be two option agreements,

one between me and Blair -- that is, when I say "me," I mean myself and my other members of my group.

THE COURT: The plaintiffs here.

THE WITNESS: That's correct. One option agreement was between us and Blair. The other option agreement was between us and Capital Management Corporation. And I will explain in a minute why we did that, if you so desire. I think it is relevant.

THE COURT: I leave that up to Mr. Fried.

Q Dr. Foley, just confine yourself now to the conversations in that period of time.

A The other were collateral agreements, again two of them, one with Blair and one with CMC.

And there was a good bit of discussion, Mr. Fried, and in these discussions Mr. Richardson played a very major role, and so did Dr. Haberle.

MR. REILLY: I object, your Honor. I think we should just have questions and responses and not a little speech.

THE COURT: I do not think it is a little speech and I think the background of the negotiations will not hurt the jury.

But I do urge you, Dr. Foley, and Mr. Fried, to try to stick to the substance of the events.

Q See if you can confine yourself to the conversations.

A The only other point that occurs to me, Mr. Fried, relates to why we had lengthy discussions with Dr. Haberle involved and why that was so important to us as well as to Blair. I would be happy to explain it, if you so desire.

THE COURT: Just tell us what happened. Mr. Fried can inquire, if he thinks it is necessary.

THE WITNESS: Dr. Haberle was called.

The purpose of the discussions -- I have to explain that, your Honor.

The purpose was to try to work out an option agreement that would be fair to Blair and to CMC and to members of my group, because CMC bore a certain relationship to Blair.

So, if we got options only with Blair, they could take the assets out of Blair and put them into CMC.

MR. REILLY: I object, your Honor.

THE COURT: Let me intervene.

You may have rights, and I suppose could have rights, under the option agreement, but you are not making any claims under the option agreement here.

THE WITNESS: That's right.

THE COURT: So you do not need to go into that.

Again, Mr. Fried, I ask you perhaps, if you can, to channel this discussion.

Q Dr. Foley, have you told us substantially all of the conversations you had in that period of time?

A Up to the time of the closing, yes, sir.

Q You mentioned that during that period of time you were given certain documents.

MR. FRIED: I would like to have these documents marked for identification, your Honor.

THE COURT: I would hope they already have been, but certainly. If documents have not been marked, I will have to talk to counsel about getting them marked before, pre-marked, so we don't have to spend time on it.

MR. FRIED: Evidently the Magistrate did not require that, and I found that they had not been marked, your Honor.

(Plaintiffs' Exhibits 1 through 5 were marked for identification)

MR. REILLY: May I inquire whether counsel has copies of those for us to look at.

THE COURT: You are entitled to look at them,

certainly. I am assuming, gentlemen, that in this well-prepared case, by counsel of such standing, that there will be copies of all exhibits for every other counsel.

MR. FRIED: So I understand. Except there is a big book there that we could not duplicate, your Honor.

(Plaintiffs' Exhibit 6 marked for identificatic)

MR. FRIED: I am told that they were difficult to duplicate, your Honor. So we have a problem. But there are only six or seven of them all together. We tried to give them to some professional duplicator.

MR. REILLY: We have no objection to the receipt of these in evidence.

THE COURT: Very good.

Exhibits 1 through 5 received in evidence.

(Plaintiffs' Exhibits 1 through 5 received in evidence)

MR. REILLY: I have no objection to 6.

THE COURT: All right. Exhibit 6 is received.

(Plaintiffs' Exhibit 6 received in evidence)

xxx

Q Dr. Foley, you mentioned that Mr. Vanderbilt had given you a number of documents, and I show you

Plaintiffs' Exhibits 1 to 6 inclusive. I ask you to look at those exhibits and tell me if those are the documents to which you made reference.

A Yes, sir. These are the documents.

MR. FRIED: Your Honor, may I just explain to the jury, without reading all of them, what these exhibits are?

THE COURT: Yes.

MR. FRIED: Exhibit 1 is an advertisement in the Wall Street Journal of February 16th and it relates to the opening of an office on behalf of Blair & Company in Chattanooga, Tennessee. I won't read that, but I would like to pass it to the jury, if I may, your Honor.

THE COURT: Perhaps we could do it hereafter, I do not mean a long time hereafter. Why don't you make all of your explanations now.

MR. FRIED: And Exhibit No. 2 is a printed brochure. One side of the leaflet designates it as a financial report as of September 26, 1969. And I would like to read a portion of this, your Honor, to the jury.

THE COURT: All right.

MR. FRIED: The statement here is:

"We enter our 80th year with confidence. The period of adjustment that followed our merger with Schwabacher

& Company has just about ended and many benefits to our company and to our clients are now becoming apparent. Our Research Department has been expanded. Our Portfolio Review Department has been established. We have made a number of important changes in our computer oriented Operations Department to improve the many essential services it provides. Our Investment Banking and Underwriting Department has been expanded. We have established a new Options Department.

"Blair & Co. is now functioning as one firm whose primary objective is to provide services reflecting the highest professional standards. We enter our 80th year with confidence that we will meet this challenge."

There is a picture of Oliver D. Vanderbilt, the Chairman of the Board, and James B. Ramsey, Jr., the President.

Next to that is another panel, which is a certificate of the accountants, Arthur Young & Company. I am not going to read the entire thing. It is quite lengthy.

"The statement of financial condition of Schwabacher Division at September 26, 1969 (not shown separately) was prepared by the Company. Inasmuch as we do not make an examination of it in accordance with

generally accepted auditing standards, nor of any of the financial transactions since June 27, 1969 (referred to below), we express no opinion thereon. We did examine a statement of financial condition (as set forth in the answer to financial questionnaire) of the Schwabacher Division at June 27, 1969 and reported thereon under date of August 15, 1969. That examination was made on the same basis and our opinion was qualified with respect to the same matters as described above for the Blair Division.

"Inasmuch as we did not make an examination in accordance with generally accepted auditing standards at a single day for both Blair Division and Schwabacher Division, whose individual statements of condition are combined in the accompanying statement of financial condition of Blair & Co., Inc. at September 26, 1969 as explained above, we are unable to express an opinion thereon. It is our opinion, however, that the combined statement has been properly compiled."

Exhibit No. 3 is the reprint from Business Week, which has a picture of Oliver Vanderbilt, and it is captioned "Investing With Tax Dollars. Limited Partnerships Have Attractions Beyond Wall Street."

There is an article there which I am not going to read at this time.

Exhibit No. 4 is a letter on the letterhead of Capital Management Corporation, and I will only read two paragraphs of that letter.

"Capital Management Corp. (CMC) is a corporate affiliate of Blair & Co., Inc., under Rule 321 of the New York Stock Exchange. One hundred percent of its voting stock is owned by stockholders of Blair & Co.

"It is our intention to establish CMC as a holding company under which initially selected, and eventually perhaps all, operating departments of Blair will be incorporated as separate major controlled operating divisions. It is possible that one or more other members of the firm may be included under this holding company concept."

Exhibit No. 5 is a brochure explaining the activities of Capital Management Corporation. It has pictures of various explanatory articles.

Exhibit No. 6 is a document consisting of two pages. The top of it says "Blair & Co., Inc., a Chronological History." It starts off by saying, "T he name Blair has been identified with Wall Street since 1890, when John I. Blair, then ninety years old, organized a partnership under the name of Blair & Co. to conduct a general banking and securities business."

It goes on to tell about the firm, and I will not burden you with the rest of that.

These are all the exhibits that have been offered at this time, your Honor.

THE COURT: All right.

MF.FRIED: May I have them passed to the jury?

THE COURT: Yes.

(Pause)

MR. REILLY: Your Honor, may I suggest that at the next recess, counsel will endeavor to get the clearest possible copies of whatever Fried may want to offer.

THE COURT: I would like to talk with counsel about exhibits at the next recess, anyway, and we will take up whatever you have in mind.

MR. REILLY: Thank you.

(Pause)

(Plaintiffs' Exhibits 7, 8 and 9 marked for identification)

MR. REILLY: Your Honor, I have no objection to 7 and 8. It's going to take me a few minutes to be certain as to Exhibit 9. It's a voluminous document.

THE COURT: All right.

MR. LOFLIN: Mr. Fried, could I see 7 and 8 while Mr. Reilly is looking at 9?

MR. FRIED: I am sorry, of course.

MR. REILLY: I am sorry, your Honor, I can't agree as to 9 in its present form although the difficulty I have with it is something that I could probably resolve with Mr. Fried during our next recess.

THE COURT: All right. After the jury is finished looking at the exhibits they have, why don't you

go ahead with 7 and 8, and I will rule on 9 at the recess if necessary.

(Plaintiffs' Exhibits 7 and 8 for identification were received in evidence)

MR. FRIED: It is just a question of checking the accuracy of the exhibit, your Honor.

THE COURT: All right.

(Pause)

MR. REILLY: Your Honor --

THE COURT: Yes.

MR. REILLY: May I be heard?

THE COURT: Yes.

MR. REILLY: I would have no objection to the receipt in evidence of Exhibit 9 for identification provided it were limited to what I have here: The collateral agreement with exhibits. In its present form there is stapled to that collateral agreement with exhibits a Blair option agreement of ten or twelve pages, a CMC option agreement of several pages, and a two-page letter of April 3, 1970.

I would not object to the receipt in evidence of the last three documents separately. My objection is simply that they have been offered in a form that I find objectionable, and if Mr. Fried would want to remove --

MR. FRIED: I will separate them, then.

THE COURT: I think that would be better, and if you want to refer to them separately, you can.

Are you finished, ladies and gentlemen? Are you satisfied with your examination?

All right, Exhibit 9 is received.

(Plaintiffs' Exhibit 9 for identification was received in evidence)

THE COURT: Are you ready to proceed with your questioning now?

MR. FRIED: Yes, your Honor.

BY MR. FRIED:

Q Dr. Foley, during that same period of time, from the first time that you met anyone at Blair & Company until the closing, but not including the closing, to your knowledge did your wife meet or talk with any representative of Blair & Company?

A No.

Q And in that same period of time, to your knowledge, did Anita Salisbury, the other plaintiff, the individual plaintiff in this case, meet or talk with anybody?

A Yes.

Q When to your knowledge did Anita Salisbury

meet anyone from Blair & Company?

A She met Mr. Vanderbilt and Mr. Richardson and Dr. Haberle, and I think Mr. Rush, on the occasion of their visits to our office.

Q How many visits were there, to your knowledge?

A Well, they didn't all come together, except perhaps on one occasion. I would estimate that Mr. Richardson and Mr. Rush came to my office two or three times and that Mr. Vanderbilt and Dr. Haberle came a couple of times, one of which may have overlapped, but the others were separate.

Q During that same period of time, did Mr. Feldman, to your knowledge, meet with any representatives of Blair & Company?

A He met with them a number of times.

THE COURT: Are you referring to meetings he had with them when you were not present, I take it?

THE WITNESS: Both.

THE COURT: Both. All right.

THE WITNESS: Both when I was present and when I was not present according to what he told me.

THE COURT: All right.

Q Dr. Foley, we move along now to April 3rd, which was the date that certain documents were signed and

which has been referred to as the closing date.

What time of the day did that meeting start?

A It was supposed to start about 3:00 o'clock, but the official start was delayed somewhat because of a discussion relating to the wording of one or two segments of the documents to be signed.

Q Where did that meeting take place?

A At Blair & Company.

Q To the best of your recollection, will you state who were all of the people present at the closing?

A I was represented by Mr. Feldman, my attorney, and Mrs. Salisbury was with me. Mr. Luce was there. Mr. Richardson was there. Me. Hepburn was there. He was an officer of Blair -- I believe secretary. Mr. Rush was there. Mr. Vanderbilt came in and out. He was not there continuously throughout the meeting, which was rather long, but he would come in for five minutes or ten minutes, fifteen minutes, and then come out and go in again.

Mr. Segal --

THE COURT: Who was he?

THE WITNESS: He was an attorney with Richard Nixon's old firm. Nixon, Mudge, Guthrie -- I don't recall the name of the firm.

THE COURT: He represented Blair?

THE WITNESS: He represented Blair, yes, sir.

A That's all I recall at the present.

Q You mentioned Mr. Luce was present. He was the man who introduced you to Blair.

A That's right.

Q At that time, April 3, 1970, was he in any way connected with Blair & Company?

A Not at that time, no, sir.

Q Did he subsequently become connected with Blair & Company?

A According to my understanding, yes.

Q In what respect did he become connected with Blair & Company?

MR. REILLY: Your Honor, I object unless the witness can testify according to his own knowledge.

THE WITNESS: I am testifying according to my own knowledge, because Mr. Luce told me he was working for Blair, at a later time. Exactly when he joined Blair I don't know.

Q Did he tell you in what capacity he was working for Blair?

A In the area of underwriting and acquisitions, I believe.

Q All the people that you have mentioned were in

one form or another representing Blair. Is that right?

MR. REILLY: I object to that.

THE COURT: No, he did not --

Q I am sorry. The people you saw. Mr. Hepburn --

A The people I mentioned --

MR. REILLY: I will object.

THE COURT: I sustain the objection.

Let's put it this way:

Mr. Feldman, Mrs. Salisbury and you were there as lenders or as representative of the lenders, is that right?

THE WITNESS: As subordinated lenders, your Honor. And everybody else except Mr. Luce -- Mr. Luce was a third-party -- the other people were either employees of Blair or attorneys employed by Blair.

Q Was your wife present on that occasion?

A No, sir.

Q You say the meeting started really about 4:00 o'clock?

A I would say 3:30, 3:45.

Q How long did the meeting last?

A Several hours. I think we left 6:30, 6:45 or even 7:00, somewhere in the neighborhood.

Q You also mentioned Mr. Daley.

MR. BROOKS: He didn't.

A I didn't mention him.

Q Was there a Mr. Daley?

A I don't recall.

Q During the course of that meeting were you given any documents other than those documents that you signed?

A Not to my recollection.

Q Dr. Foley, at the time of the closing, did you sign a number of documents?

A A very large number.

MR. FRIED: Your Honor, would this be a good place to take a short recess?

THE COURT: If you wish it.

Ladies and gentlemen, we will take a short recess. I would like to see counsel in the robing room about these exhibits.

(In the robing room)

THE COURT: Gentlemen, I guess neither the Magistrate nor I suggested that the exhibits should be pre-marked. In my case it was because I assumed in a matter of this sort, with the firms I was dealing with, with the number of pages going in evidence that would be done as a matter of course, and I should print in the Law Journal

* * *

been signed when I agreed to its admission in evidence. It is difficult to read, but it appears to be his signature.

THE COURT: Are counsel satisfied that I can advise the jury that even Dr. Foley can't be certain whether he signed it or not, it is stipulated that in fact he did.

MR. REILLY: Yes, your Honor.

THE COURT: All right.

Do you understand that, ladies and gentlemen? Sometimes we can't all remember the things we sign, and apparently counsel are satisfied that Dr. Foley did sign this document, although he can't be sure.

BY MR. FRIED:

Q Dr. Foley, in addition to those documents, did you sign other documents, copies of which you never obtained?

A Yes. At least copies of which are not here?

Q Yes.

A I believe I signed one or two documents which enabled me to act on behalf of my wife and Mrs. Salisbury and J. P. Foley & Company in the subordination of securities that were subordinated.

I fail to find them in this group. I know I signed a very large number of stock powers.

THE COURT: Right.

Q Stock powers? That is the form that appears where you want to transfer your interest in a particular share of stock, is that right, or shares?

A That is right.

Q About hwo many of those did you sign on that occasion?

THE COURT: I suppose one for each of the securities --

A I guess forty to sixty.

Q Dr. Foley, you mentioned before that there was a warranty in one of these agreements. I show you Plaintiffs' Exhibit 10, paragraph 10, and ask you if that is the warranty you had reference to.

A Yes, sir.

MR. FRIED: Your Honor, may I read that paragraph from Exhibit 10?

THE COURT: Yes. I wish you would.

What document are you reading from? What is that?

MR. FRIED: This is an option agreement, Blair option agreement.

Paragraph 10 of that agreement says:

"In order to induce optionee" --

Q And you are the optionee, is that right?

A That is my understanding.

(Mr. Fried read to the jury from Plaintiffs' Exhibit 10, paragraph 10, in evidence.)

Q Dr. Foley, do you know whether these documents, Plaintiffs' Exhibits 7 through 14, were filed with the New York Stock Exchange before the closing date?

A I don't know. I have no knowledge.

Q Do you know whether they were filed after the closing date?

A Same answer. I have no knowledge.

MR. FRIED: May I read Exhibit 13 to the jury, your Honor?

THE COURT: Yes, sir.

MR. FRIED: This is a letter dated April 3, 1970. It is addressed to the New York Stock Exchange, 11 Wall Street.

(Mr. Fried read to the jury from Plaintiff's Exhibit 13 in evidence.)

Q Dr. Foley, did you have any conversation with anyone at that meeting regarding this letter?

A Yes.

Q Who was the person you spoke to about this letter?

A Mr. Richardson, to the best of my knowledge.

Q What did Mr. Richardson tell you about this letter?

A He said it was a perfunctory letter, a letter that was asked of subordinated lenders generally. It was a general practice in asking subordinated lenders to sign such a letter.

Q There is a statement in this letter, "I have conducted such investigation of Blair &Co., Inc. and its participants as I consider desirable, appropriate and necessary under the circumstances."

Up to the date of April 3, 1970, what, if any, investigation did you conduct?

A Well, I had had discussions with officers of Blair. I had learned that, and been told that, they were a member of the New York Stock Exchange, that they were a member of the American Stock Exchange. I had been told about the nature of their business, which is essentially a banking type business, in which they are responsible for funds deposited by customers.

MR. REILLY: I move to strike the last part of that, your Honor.

THE COURT: You mean you were told that?

THE WITNESS: Yes, sir.

THE COURT: Overruled. I'll allow it as to what he was told or investigated.

THE WITNESS: I also called a vice president of the Chase Manhattan Bank, Mr. Thomas Cahill, to whom I had previously been introduced, and I asked him about the financial condition of Blair and had been told by Mr. Cahill that they were in good condition, to the best of his knowledge.

I think that's about the extent of it.

Q Did you receive any financial information whatever, aside from the statement of financial condition which has already been marked in evidence here as Exhibit 2, prior to April 3, 1970 (indicating)?

A The only other financial information which I recall, Mr. Fried, was that on one of the occasions in which Mr. Feldman and I were talking with Mr. Rush in his office, Mr. Rush showed us an operating figure. It was like a worksheet, an informal worksheet --

THE COURT: You say he "showed us."

THE WITNESS: Mr. Feldman and I.

A (Continuing) -- that contained some figures relating to the current, then current, financial condition of Blair. But to the best of my knowledge he did not give us that to take with us, nor did he send me that in the mail.

It is conceivable that I might have --

Q Well, --

A Okay.

Q -- as far as you know --

A As far as I know, that is --

Q -- the only other financial information received by you prior to April 3, 1970.

A Yes, sir.

Q This letter is addressed to the New York Stock Exchange. Was any representative of the Stock Exchange present in the Blair office at the time of the closing?

A No.

Q There is also a statement in this letter that you are familiar with the facts, and so forth, with regard to Blair "as set forth in the letter of March 10, 1970."

Did you receive, prior to April 3, 1970, a copy of the letter of March 10, 1970 referred to in Plaintiffs' Exhibit 13?

A No.

Q Did you ever receive it after that?

A No.

Q Did your attorneys receive it?

A I believe they found it in the process of discovery in some fashion.

MR. FRIED: May I have this marked for identification?

xxx (Plaintiffs' Exhibit 15 was marked for identification.)

Q Dr. Foley, I show you Plaintiffs' Exhibit 15 for identification and ask you if you ever saw that letter until after this lawsuit was instituted.

THE COURT: Is that the letter of March 10th to which reference was made?

THE WITNESS: That is correct.

A I did not see this letter prior to the institution of our lawsuit.

MR. FRIED: I offer that letter in evidence.

MR. REILLY: May I see it, please?

I have no objection, your Honor.

THE COURT: Thank you, Mr. Reilly.

MR. LOFLIN: No objection.

xxx (Plaintiffs' Exhibit 15 for identification was received in evidence.)

MR. FRIED: May I read this, your Honor?

THE COURT: Yes.

MR. FRIED: Plaintiffs' Exhibit 15 is a letter on the letterhead of the New York Stock Exchange addressed to Mr. James B. Ramsey Jr., Blair & Company, 20

Broad Street, New York, dated March 10, 1970.

xxx (Mr. Fried read to the jury from Plaintiffs' Exhibit 15 in evidence.)

Q Dr. Foley, did the contents of this letter ever come to your attention prior to the closing?

A No.

Q Dr. Foley, did you learn that on April 6th, which was the Monday morning after the date of the closing, the Stock Exchange had directed that the liquidation take place of all the insider subordinated loans?

MR. REILLY: I object, your Honor, on two grounds. One is that I don't think it is within the knowledge of this witness, and, second, I think we've long since passed the point of leading.

THE COURT: I'll sustain the objection.

I don't know, Mr. Fried, if you are trying to bring out what Dr. Foley learned. I don't know if that will be significant here. If you are trying to bring out the event itself, it will have to be done by somebody who had firsthand knowledge of it.

MR. FRIED: I am talking about what he learned, your Honor.

THE COURT: You can ask him what he learned.

Q When did you learn --

THE COURT: Please don't lead him as much any more.

Have you learned, since April 6th, of certain events which occurred at Blair & Company on April 6th?

THE WITNESS: Yes, sir.

THE COURT: What have you learned and from whom have you learned it?

THE WITNESS: That is a very broad question, your Honor. I've learned a lot of things.

THE COURT: Have you learned anything with regard to liquidation of securities?

THE WITNESS: Yes, I have.

THE COURT: What have you learned, and from whom, regarding April 6th?

MR. REILLY: I do have an objection on the ground of hearsay, if he learned it from someone else. I would like at least some foundation.

THE COURT: If it is for the purpose of advising the jury of what he learned, although I'm not quite clear why that is of any importance, I'll allow it. If it is for the purpose of trying to establish that these things actually occured on April 6th, I am not going to allow that.

You told me it is for the purpose of trying to establish what he learned, is that right?

MR. FRIED: That's right. There will be independent proof, your Honor.

THE COURT: I'll allow Dr. Foley to advise you what he was told. That doesn't mean what he was told actually occurred. And if either party wishes to show what actually occurred on April 6th, they will have to produce a witness who knows what actually occurred on April 6th.

But you can tell me what you were told.

THE WITNESS: Yes, sir.

In late June or very early July 1970, I was asked to attend a meeting at Blair by Mr. Ramsey, a meeting of all, or most, of the subordinated lenders to Blair, of which I was one, and that meeting was held at Blair in either late June or early July, to the best of my recollection.

The meeting was chaired by Mr. Ramsey, and in the course of the various remarks that he made, which were many, he said that the conditions at Blair had progressively worsened and that he was -- he and Mr. Vanderbilt had been making efforts to merge Blair into Thomson & McKinnon and so far their efforts had been unsuccessful because of the attitude of the New York Stock Exchange.

MR. REILLY: I object, your Honor.

THE WITNESS: He said that.

MR. REILLY: It is no longer responsive to the question.

THE COURT: Sustained.

The question, Dr. Foley, is what you learned about the liquidationof the securities on --

THE WITNESS: I am coming to that.

THE COURT: Well, please come to it now.

A He said that as a result of that unsuccessful effort that they were seriously considering --

THE COURT: Wait a minute. We are talking --

A (Continuing) -- the liquidation --

THE COURT: Just a minute. The question which was put had to do with events which may or may not have occurred, but if they did, it was on April 6th. You are telling us of a meeting in June or July in which something was being considered. We can't be talking about the same thing.

THE WITNESS: That's the strange part, your Honor. We are.

THE COURT: Will you tell me not what was being considered but what you were told at the meeting --

THE WITNESS: The first mention, your Honor --

THE COURT: -- of any possible liquidation of

securities on April 6th.

THE WITNESS: The first mention that I heard anybody make at Blair about the liquidation of securities occurred at that meeting. Mr. Ramsey --

THE COURT: Tell us what he said about April 6th, not some other --

THE WITNESS: He did not refer to some other --

MR. REILLY: Then I object.

THE COURT: The objection is sustained, and the jury will disregard what has been testified to on this point.

Q When did you first learn about liquidation on April 6th?

A After we started our --

MR. REILLY: Objection.

THE COURT: Yes. Sustained.

Q You found that there was a --

MR. FRIED: Let me withdraw that.

Q After the closing, the next thing that happened is that you were at a meeting at Blair's --

MR. FRIED: Let me withdraw tha t.

Q Dr. Foley, after the closing, what was the next thing that happened with respect to your relationship with Blair & Co.?

A Mr. Rush began sending me financial statements,

operating statements, relating to Blair. These were -- he had previously promised to send them promptly at the end of each month. He sent us several -- sent me several.

THE COURT: You received them monthly, you say?

THE WITNESS: I don't believe it was every month, and they were late, your Honor, but I did receive several of them, starting, I would say, in May or June and going into July and August, to the best of my recollection.

I also had a call from Mr. Vanderbilt, asking me if I knew anyone who might be able to submit -- to furnish additional subordinated capital to Blair, and, to the best of my recollection, I had that call from Mr. Vanderbilt some time in May.

Shortly thereafter, we had a meeting, at which Mr. Vanderbilt, Mr. Ramsey and a very close friend of mine, Mr. Lawrence Ackerman, were present. It was a luncheon meeting. We met at Blair and adjourned from there to the Harbor View Club for lunch, the four of us, and the purpose of that meeting was to discuss -- we discussed in the meeting Blair's interest in bringing in additional capital into the firm.

I was asked if I -- if they were -- I should say that Mr. Ackerman was there, because he was a very well known man in the insurance industry. He is a former dean of the Business School of the University of Connecticut, and he is

on the board of directors of several large insurance companies. He's written books on insurance and so forth.

MR. REILLY: I object to this, your Honor.

THE COURT: All right. That's enough on Mr. Ackerman.

A (Continuing) He was there to talk to Mr. Vanderbilt and Mr. Ramsey.

THE COURT: Just tell us what happened.

A (Continuing) He was asked if he knew of any companies that could supply additional capital. He said he would look into it.

Q And then you spoke about a meeting that occurred in June or July.

A Yes. A meeting called by Mr. Ramsey.

Q What happened at that meeting?

A That was a meeting of the subordinated lenders to Mr. Blair, and it was at that meeting that I met several of the people from Schwabacher.

Mr. Ramsey first described the deteriorating financial condition of Blair. He then described or discussed the steps that he and Mr. Vanderbilt had taken to effect a merger of Blair into Thomson & McKinnon, and he told us that he had had several discussions with members of the New York Stock Exchange.

THE COURT: Don't go into that, please.

THE WITNESS: Yes, sir.

A (Continuing) He then told the group that he had been informed that certain Blair offices would be sold off to other firms, to other investment firms. He expressed his displeasure at that decision. He referred to it as a turkey shoot.

Q What does a turkey shoot mean?

MR. RILEY: I object to that.

THE COURT: I don't see that that is necessary.

A (Continuing) Finally, he indicated that there was a strong possibility that the insiders' subordinated capital would be liquidated.

Q You said "would be liquidated"?

A Would be liquidated.

Q Are you sure he didn't make any reference to the fact that they had already been liquidated?

A That is correct. He did not.

Q Dr. Foley, did you receive any payments from Blair & Co., of interest or dividends, during the year 1970?

A One, to the best of my recollection.

Q What was the amount of that?

A I don't recall the amount, Mr. Fried. I could approximate it.

Q Other than that one single interest payment, have you received any other income from Blair & Co.?

A No.

Q And have any of the securiried which you deposited with Blair ever been returned to you?

A One: Amicon Corporation.

Q Aside from that, were any other securities returned to you?

A No.

Q Was Amicon considered part of the subordinated loan?

MR. RILEY: I object to the form and the use of the word "considered".

THE COURT: Am I correct in stating, gentlemen -- I believe I am correct, from the papers submitted to me before the trial -- that this one stock was not available to be used toward the increase of net capital of the firm, and therefore was distinguished from the rest of the securities which Dr. Foley had placed with Blair?

MR. REILLY: That's right.

Q With his Honor's explanation, was everything else delivered to Blair & Co., the stock certificates --

A That is correct.

Q Did you ever have any of them returned to you, by Blair & Co or anyone else?

A No.

THE COURT: Mr. Fried, I think this would be an appropriate time to recess for lunch.

We will resume at two o'clock, ladies and gentlemen.

(The jury left the courtroom.)

(A luncheon recess was taken.)

- - -

AFTERNOON SESSION

2:00 P.M.

(In open court - jury present)

JOHN P. FOLEY, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. FRIED:

Q Dr. Foley, on April 3, 1970, at the time of closing, did you ever deliver physically stock certificates to Blair & Company?

A No.

Q When were the actual transfers by physical delivery of stock certificates, made?

A You mean by physical delivery, meaning me or some agent on my behalf.

Q How was it effected?

A I personally took some of the securities to Blair on Sunday, the 12th of April. The remaining securities were transferred from my account at Shields & Company to the account at Blair & Company, over a period of time, a number of weeks.

MR. FRIED: May I have this statement marked as an exhibit for identification.

(Plaintiffs' Exhibit 16 marked for

identification)

Q Dr. Foley, I show you Exhibit 16 for identification and I ask you if you can identify this Exhibit 16.

A Yes. This is my monthly statement received from Shields & Company at the end of April, namely, April 30, 1970.

Q Does that list the securities you had on deposit at that time with Shields & Company?

A This is correct.

MR. FRIED: I offer that in evidence.

THE COURT: I am not quite clear what it is offered for, to prove.

MR. FRIED: For that showing the dates of actual transfers of the certificates, your Honor.

THE COURT: I see. All right, show it to Mr. Reilly.

MR. REILLY: Your Honor, I have no objection. I would like to reserve the right to compare this with our copy to see if it is complete.

THE COURT: Certainly. It is received subject to correction, if any is required.

(Plaintiffs' Exhibit 17 marked for identification)

(Plaintiffs' Exhibit 18 marked for

identification)

THE COURT: I am sorry, Mr. Loflin. I did not mean to cut you off.

MR. REILLY: Your Honor, there is no objection by any counsel to 16.

THE COURT: Very well. It is received in evidence.

(Plaintiffs' Exhibit 16 for identification was received in evidence)

THE COURT: Are you combining one exhibit there? Gentlemen, I don't understand why this was not done during the lunch break. I will not accept any exhibits until after the break. This is childish.

Q Dr. Foley, I show you Exhibits 17 and 18 and ask you if you can identify those two documents.

A Yes, I can.

Q What are they?

THE COURT: Tell us separately. 17 and 18 --

THE WITNESS: Yes, sir.

A 17 is the Blair monthly statement.

THE COURT: For your account?

THE WITNESS: For my personal account, as of -- as of April -- I believe it's the 25th. The number is very blurred here, your Honor.

THE COURT: As of whatever date is indicated.

THE WITNESS: It is late April. It is near the end of the month. It's the April statement, in other words.

And the other one is my personal statement at Blair. It's very clear.

THE COURT: All right.

MR. FRIED: I offer both of those statements in evidence.

THE COURT: You may proceed with the questions.

Q Were those the statements you received from Blair indicating that they had received the stock certificates from Shields & Company?

A That's right.

MR. REILLY: Excuse me. We still have these. I have no objection, subject only to possible verification.

MR. LOFLIN: I have no objection.

THE COURT: All right.

(Plaintiffs' Exhibits 17 and 18 for identification were received in evidence)

Q Dr. Foley, this morning you mentioned that you received one interest payment or thereabouts from Blair & Company, in the year 1970; is that correct?

A That's correct.

Q During that year did you receive any dividends on the various shares of stock that you had deposited with Blair & Company?

A Yes.

Q How many dividends did you receive?

THE COURT: For how long?

MR. REILLY: Your Honor, I object to all of this.

MR. FRIED: For 1970.

THE COURT: You don't mean any separate dividends, do you?

MR. REILLY: Your Honor, I don't think there is any issue as to whatever dividends were paid on the stock.

THE COURT: Well, Mr. Fried is still entitled to bring it out for whatever purpose he wants.

However, I do not know whether your question is literally, did he get 175 different checks or for how long or what the question is.

Q Did you receive any dividend checks at all from Blair after April 3, 1970?

A Yes.

Q Do you know how many dividend checks you

received, Dr. Foley?

A I received three, to my recollection, but two were in error, and I returned them.

Q Do you know whether Blair & Company retained any dividend checks which they didn't turn over to you?

A Yes. According to the records, the answer is yes.

MR. REILLY: I object to that and move to strike the answer unless the records are produced. After all --

THE COURT: Yes. Sustained.

Q Dr. Foley, this morning you were shown Plaintiffs' Exhibit 13, which is the letter addressed to the New York Stock Exchange, and I ask you whether that letter was prepared by you or by Mr. Feldman or anyone on your behalf.

A No. I didn't prepare it. Mr. Feldman didn't prepare it.

Q That letter was one of the documents that you signed at the office of Blair & Company on April 3rd, the day of the closing?

A Yes.

THE COURT: May I look at that?

All right.

Q Dr. Foley, next to the collateral agreement

there is a list of the securities. I would just like to have the record clear. And except for the Amicon stock, were all of these securities which are listed on Plaintiffs' Exhibit 9 delivered to Blair & Company after February 3, 1970?

A Yes. To the best of my knowledge.

MR. REILLY: Excuse me for interrupting. There are several lists of securities. I just wanted to inquire as to which one the witness was referring to.

MR. FRIED: This is the typewritten list, Mr. Reilly. It is not identified as such, but it is the typewritten list.

MR. REILLY: Thank you.

MR. FRIED: I have no further questions of the witness at this time.

THE COURT: All right. Thank you, Mr. Fried.

MR. REILLY: May I proceed.

THE COURT: You may.

tlpm

CROSS EXAMINATION

BY MR. REILLY:

Q You testified this morning that the contents of the March 10, 1970 letter, that is Exhibit 15, never came to your attention prior to the closing.

Would it be fair to say that if the contents of that letter had come to your attention prior to the closing you would not have gone ahead with the subordination?

THE COURT: Do you know the letter he is talking about?

THE WITNESS: I would like to see it, your Honor.

THE COURT: I think you had better.

MR. REILLY: May I hand it to the witness?

THE COURT: Yes.

A I would say it is very likely that I would not have proceeded with the closing, Mr. Reilly.

THE COURT: May I see the letter so I can advise the jury what we are talking about.

THE WITNESS: Surely.

(Handing)

THE COURT: Ladies and gentlemen, the exhibit that we are talking about is a letter from the Stock Exchange to Blair & Company dated March 10th, which was

read to you earlier and which starts out, "The purpose of this letter is to express the Exchange's serious concern over the conditions currently existing at Blair," and so on.

Q I would like to turn to a few additional background materials, that your counsel did bring out generally on direct, as to your educational background.

Did you receive any academic award when you were at the University of Indiana?

A Yes. Phi Beta Kappa.

Q I would like you to tell me a little more, if you could, about the work of J.P. Foley, Inc. during the period, say, the latter half of 1969 up to April 1970.

You testified yesterday to a substantial extent as to its work and personnel work, personnel evaluation, aptitude tests and similar employee relation matters.

Is there anything else that the firm did at that time, or that you as its principal did at that time? I'm talking now between the latter part of 1969 to the early part of 1970.

A Nothing else, Mr. Reilly --

Q Nothing at all?

A I would say during that time period ninety percent of the work we did for clients would have involved

the evaluation of personnel, both applicants and current employees, and the remaining ten percent would fall into the other two or three areas, personnel areas, I mentioned yesterday.

Q So it would be all in personnel?

A Oh, yes, without exception.

Q Your firm did not specialize in advising industrial concerns as to new acquisitions and mergers?

A No. The only occasion in which we would be involved in merger and acquisition work would relate to a situation where personnel were to be evaluated, and I can explain that if you would like me to do so.

Q No.

Didn't your firm also at that time specialize in the area of corporate organization and planning?

A Only in respect to personnel.

Q Didn't your firm at that time also specialize in the area of communications?

A We did no work for clients in that area, but we were prepared to offer services in some aspects of that field, such as an employee house organ or some other communication program that a company might adopt. But there is a distinction here between what we did during that period and what we were prepared to do.

MR. REILLY: I regret, your Honor, I have not had this marked for identification before. May I have it done now?

THE COURT: I guess so.

(Defendants' Exhibit A was marked for identification)

Q Can you identify Defendants' Exhibit A for identification?

A This is my academic vitae -- my vitae, I guess I should say, Mr. Reilly.

Q Was that document prepared by you or under your supervision or at your direction?

A Yes, I would say yes. I think I prepared most of this myself.

THE COURT: A vitae is a resume of your experience?

THE WITNESS: That's correct.

MR. REILLY: I would like to read to the jury just one sentence.

THE COURT: It is not in evidence yet.

MR. REILLY: I'm sorry. I offer it in evidence.

MR. FRIED: No objection.

THE COURT: REceived in evidence.

(Defendants' Exhibit A for identification

was received in evidence)

MR. REILLY: About the middle of the page is the sentence that reads:

"Dr. Foley resigned from the Psychological Corporation at the end of 1955 to form his own management consulting organization, located at 50 East 42nd Street, New York City, which specializes in the area of corporate organization and planning, selection and training programs, evaluation of key personnel, management development, employee attitude surveys, communications and new acquisitions and mergers."

Q Did you also do management consulting work for various securities firms prior to April 1970?

A I did, yes, sir.

Q And would those securities firms include the following: Laird Corporation, Lehman Brothers, Reynolds & Company, Dean Witter, Hayden Stone, Williston & Bean?

A That's right.

Q And isn't it also fair to say that you had done consulting work for many investment firms for more than twenty years?

A That's correct.

Q And as a consequence you were familiar with the operations of a broker-dealer.

A I'm not sure I know what you mean by that question, Mr. Reilly.

(Pause)

Q Do you recall being examined in the Blair bankruptcy proceedings on October 13, 1971 and being asked the following questions and giving the following answers:

"Q At the times of the first and second meetings, Mr. Foley, were you familiar with the operations of a broker-dealer?

"A Yes, I would say so."

Do you recall so testifying?

A I believe I do, yes, sir.

Q Do you recall also submitting an affidavit in that same proceeding sworn to on November 6, 1970, in which you said:

"It is my understanding, and has always been my understanding, through my many years in the financial world, that subordinated borrowings, although subordinated to other creditors, are nonetheless liabilities of the company, and in that respect this company has more liabilities than it had assets and was consequently insolvent."

Do you recall making that statement?

A No, I don't recall.

Q Do you deny making that statement?

A No, I don't.

THE COURT: What is the date of the affidavit?

MR. REILLY: November 6, 1970.

Q Would it be an accurate statement to characterize you as having had many years in the financial world?

A That is a very broad statement. A lot of meanings can be attributed to it, Mr. Reilly. I would be happy to elaborate those aspects of the statement in which I would concur, with which I would agree.

There are other aspects to that statement with which I would not agree. That's why I could not answer it and would not accept that statement.

Q You would not accept that statement?

A I think it is too broad, it is too general.

Q In early 1970 did you know the securities industry was experiencing serious problems?

A I knew many firms in the securities industry were having financial problems and books and records problems, yes, sir.

Q My question was, did you know they were having serious problems, whether they be books and records of financial or whatever?

A How many firms does your question refer to?

Q Many.

A I knew a few were having serious financial problems.

Q Only a few?

A Of my own knowledge, yes, in terms of what I read in the paper.

Q Do you read the paper every day?

A No, not every day.

Q Do you read the New York Times?

A Occasionally.

Q How frequently?

A It varies from time to time. I would say on the average, in a typical year, it would not average more than once a week.

Q How about the Wall Street Journal; I'm talking now --

A Very rarely.

Q -- 1970, not today.

A Okay. Very rarely, but occasionally.

Q Prior to April 1970, did you consider the possibility of investing in a very profitable brokerage firm, a firm that was not experiencing any significant difficulties?

A It is very difficult for me to answer that

question because I considered investing in only one firm prior to Blair, and at the time I first began talking --

Q Is that Hayden Stone?

A That's right.

Q And Hayden Stone was then experiencing substantial operations and financial problems; is that right?

A That's what I learned after I started talking with them, yes.

Q Is that why you withdrew from the matter?

A No, I would not say so.

Q It was Hayden Stone that made the decision to terminate that, or was it mutual?

A It was Hayden Stone. They called me and told me they had found their capital out west.

Q Did you inquire of firms such as Merrill, Lynch or Morgan, Stanley as to whether you could invest in those firms or any firms like that?

A Never talked with them.

Q Did you ever consider doing so?

A I can't say that I did.

Q Do I understand that you were a director of the Rogers Corporation?

A I am, yes, sir.

Q And you were in 1970?

THE COURT: I am sorry. What corporation?

THE WITNESS: The Rogers Corporation.

Q And you were in 1970?

A Yes, sir.

Q Is it the Lybrand firm that audits the books of Rogers?

A That's right.

Q As a director, do you receive the financial statements of Rogers as audited by the Lybrand firm?

A Yes, sir.

THE COURT: Would you tell me what kind of business Rogers Corporation is in?

THE WITNESS: It is in a rather complicated technological business involving plastics and electronic circuitry, moulded circuitry.

THE COURT: They manufacture these things?

THE WITNESS: That's right. It is a manufacturing company.

THE COURT: Thank you.

Q How often would you receive financial statements of Rogers as audited by the Lybrand firm? Was it annually, quarterly?

A You mean as of that time?

Q Yes. I'm talking now about the time relevant

to this matter. I'm talking about a time period of '69 and '70.

A You are asking me about the audited statements?

Q Yes, sir.

A Once a year.

Q When you received them, did you read them with care?

A I read them.

Q I'm asking whether you read them with care?

A I would say so.

Q I ask you the same question as to Amicorn and Consulting Psychologists Press.

Were you a director of those two companies?

A I know I was a director of Amicon at that time. I'm not sure about Consulting Psychologists Press. I may or may not have been at that time. I am now.

Q Did you receive financial statements of either or both of those companies?

A Yearly.

Q When you received them, did you read them with care?

A I would say so.

Q During 1969 and early 1970, did you have securities accounts at firms other than Shields?

A Do you mean by that did I have securities in accounts or was I eligible to buy and sell securities at other firms?

Q I wanted to know whether you were maintaining an account relationship apart from whether the securities were physically in the custody of any such firm.

In other words, effecting transactions through other brokerage firms.

A I was not actually effecting transactions. I think I could have, Mr. Reilly, but to the best of my recollection I was not. It is conceivable that I might have because it may be one or two, had one or two transactions in a period of two or three years with another firm, but I had no account, in the sense of securities in firm name, at that firm.

Q Do you recall how many transactions were effected in your account at Shields during 1969?

A No, I don't recall.

Q Would it refresh your recollection if I told you that you have already testified you had 28 and 14 transactions in that account?

A I don't recall, Mr. Reilly.

Q Would that sound like an approximate accurate figure?

A I don't recall. I just don't recall. It has been so long. I was not a trader.

Q With respect to whatever transactions there may have been, who made the investment decisions?

A I did.

Q Turning to your meetings with Blair, which commenced in late January or early February of 1970, you testified that you had from seven to fourteen meetings, perhaps nine, ten or eleven would be your most accurate estimate, and that these meetings took place at various locations.

How long did these meetings generally last?

A I would say from a minimum of 15 or 20 minutes to a maximum of an hour, an hour and a half.

Q I understood you attended several of these meetings without Mr. Feldman but perhaps most of them with Mr. Feldman, is that correct?

A That's correct, sir.

Q After the meetings which you attended without Mr. Feldman, did you report to Mr. Feldman what had been discussed at such meeting?

A Not on every occasions, but I did on a few occasions.

Q Can you recall what you reported on those few

occasions?

A Not in specific terms, Mr. Reilly.

Q Well, can you tell me in general terms?

A I can tell you the sort of thing I would have reported to him.

For example, as we were working on the way in which we could best conceptualize the option agreements with CMC, I recall on that occasion, for example, in my office I met with Dr. Haberle and Mr. Vanderbilt, and I recall communicating the results of our discussions with Mr. Feldman.

Q Did that discussion concern the number of options that you might be entitled to?

A Yes, sir, in CMC; that's correct, sir.

Q During any of these meetings that you had from January to April 3, 1970 with representatives of Blair, whether Mr. Feldman was or was not with you, did you make any notes or memoranda?

A I did not.

Q Did you, after attending such meetings, go back to your office or to your home and prepare a memorandum?

A No, I didn't.

Q Weren't you discussing during these meetings matters such as capital losses, earnings, projections,

things of that type, where numbers were mentioned by various people?

A There weren't many numbers mentioned to me, Mr. Reilly, to the best of my recollection.

Q Any numbers mentioned?

A Well, I referred this morning to the one occasion at which Mr. Rush had showed us some numbers. This was an occasion on which Mr. Feldman was present, I recall.

Q That was a document I think you characterized as results of operations or operating income?

A That's my recollection, Mr. Reilly, yes, sir.

Q And you were shown that document and didn't make any notes concerning it?

A No, I didn't.

I also recall that on the occasion of the meeting at my office with Dr. Haberle and Mr. Vanderbilt that Dr. Haberle is the man who had worked out a ratio formula of some sort that he suggested to me, and after discussion of several possible modifications in his suggestion he agreed to transmit that to Mr. Feldman and Mr. Richardson.

Q You were acting, I understand, throughout this period of time on behalf not only of yourself and your company but of Mrs. Salisbury and Mrs. Foley.

A That's right, sir.

Q Did you report to them at any time the figures or numbers or specifics that were discussed during these ten or eleven meetings that you had?

A From time to time --

Q Either yes or no.

A Excuse me?

Q From time to time you did?

A Yes.

Q I assume you had no writings to refer to in making such reports to them, is that correct?

A I had no writings other than the drafts of the agreements when they became available.

Q And prior to their becoming available you had no writings at all.

A That's right, sir.

Q And, in any event, at no time did you have any notes or memoranda?

A That's correct.

Q You carried it all around in your head.

A That's correct.

Q And relied on your recollection to convey accurately.

A I relied on the integrity of the people

at Blair with whom I was talking.

Q I'm not talking about the conversations you had with Blair. I am talking about your relating it to those on whose behalf you were acting.

A That's right, sir.

Q My question was, you relied on your ability to recall it and relate it accurately.

THE COURT: In other words to tell your wife and Mrs. Salisbury, you just relied on your own recollection.

THE WITNESS: Yes, that's right. That is prior to the stage at which the draft became available, which I then proceeded to show.

THE COURT: All right.

Q You also testified at some length about this first meeting, I believe in Mr. Rush's office, and that seemed to be the only one of the many, apart from the April 3rd closing, that you could more clearly separate or distinguish.

MR. FRIED: I object to this characterization.

THE COURT: May I have the question, please.

MR. REILLY: I will withdraw it, your Honor.

THE COURT: You withdraw it?

MR. REILLY: Yes, your Honor.

THE COURT: All right.

Q Prior to your first meeting with Blair, had you expressed any interest to Mr. Luce that you were interested in becoming a subordinated investor?

A Yes.

Q I again refer to the testimony you gave under oath in the bankruptcy proceeding on October 13, 1971 and ask whether you recall being asked this question and giving this answer.

Well, to put it in context I will read a few proceding questions and answers.

MR. FRIED: I object to this unless it is for the purpose of establishing an inconsistency.

THE COURT: Yes, but I cannot tell until I hear it.

Dr. Foley said that he did tell Mr. Luce before he met with the Blair people that he would be interested in being a subordinated lender.

THE WITNESS: That's right, sir.

THE COURT: Is what you are going to read in your view inconsistent with that?

MR. REILLY: It is in my view, your Honor. Perhaps if counsel will bear with me,it may even be, in his view.

Q "Q What is your recollection as to what transpired at the first meeting with Mr. Rush?

"A There was a discussion in respect to Blair's desire for additional subordinated securities.

"Q Is that all?

"A That was the purpose of the meeting and that was the general tenor of the meeting.

"Q Had you been a subordinated lender or investor in any other firm?

"A No.

Q Had you expressed to Mr. Luce prior to this meeting that you were interested in becoming a subordinated investor?

"A No."

Do you recall giving that testimony?

A No, I don't recall it.

Q Do you deny giving that testimony?

A No, I don't.

Q During any of these conversations that you had with Mr. Rush between, say, late January and April 3rd of 1970, did Mr. Rush characterize the Blair records problems as serious?

A I don't recall his using that word, Mr. Reilly.

Q Do you deny he told you they were serious?

A No, I will not deny it, but I don't recall his having used that term.

Q Didn't Mr. Rush indicate that Mr. Morpurgo had recently been brought in from the Midwest system because Blair was unable on its own to straighten out its serious

records problems and that they hoped that Mr. Morpurgo would be able to do so?

A About three-fourths of what you said is an accurate characterization of what he said. There is a little phrase included in your statement which he didn't make.

Q Will you please tell me what that phrase is?

A Which Blair itself was unable to clear up.

THE COURT: It is a very complicated way of informing me and the jury as to what he did not say.

Tell me what he did say.

THE WITNESS: He said Mr. Morpurgo did come in, as I testified this morning, and that Mr. Morpurgo was an expert in the Midwest system -- which by implication meant that no one else was -- and he said that Mr. Morpurgo would be able to clear up Blair's problems.

THE COURT: But he did not say that Blair had been unable to?

THE WITNESS: That is right, sir.

Q At any time during these discussions or meetings in early 1970, did you make any computations as to the benefits that you and those you represent would receive from those subordination?

A No, I didn't.

Q Didn't you understand that whatever dividends and interest and so forth that would ordinarily be earned on the securities that you might subordinate would still continue to be received by you and the other plaintiffs?

A Yes, that was my testimony. Yes, sir.

Q And that you would benefit from whatever capital appreciation might result in whatever --

A Or lose by any capital depreciation.

Q You still retained those characters of ownership?

A Yes.

Q Did you make any valuation of the options in the exhibits reflected this morning --

A I didn't, but I don't know how I could have done so, had I been so inclined.

Q Didn't you make any estimate of the possible or potential reward, compensation with respect to the options?

A I didn't, sir.

Q Did you feel that it might be worth over a period of five years $10,000 or $1 million or some figure in between?

A I made no such calculation.

Q You didn't even make an educated or even

uneducated guess?

A That's correct, sir.

Q As far as you were concerned, they might have been completely worthless as far as giving you anything of value was concerned. You didn't anticipate any specific amount.

A That is correct. I anticipated no specific amount.

Q I believe you or your counsel indicated earlier that you were receiving only three percent interest on these subordinated securities. Is that three percent on the two million, seven?

A On the market value at any given point in time, Mr. Reilly. That was my understanding of the agreement.

Q And the market value on April 3rd was approximately $2.7 million?

A It was somewhere between two and three million dollars, yes, sir. I didn't calculate it.

Q If they were worth $2.7 million, that means that $81,000 a year in the form of additional interest -- or in the form of interest?

THE COURT: Yes, it does. I will take judicial notice of that.

Q Did you ever make that calculation?

A I didn't. No, sir.

Q Did you ever estimate what it would be?

A I didn't, no.

Q Did you have any arguments with those you represent as to how that would be divided? Was it proportionally among the four?

A That's right. That was my understanding. In other words, Mrs. Salisbury had in terms of the percent, the three percent, the same opportunity for interest on her account that J.P. Foley & Company would have on it, and that I would have on mine and that my wife and I would have of on our joint account.

To clarify, Mr. Reilly, there were to be established at Blair & Company four separate accounts corresponding to the ownership of the securities that were deposited initially with Blair & Company.

THE COURT: And the total of those four accounts came to $2.7 million?

THE WITNESS: Yes, and I was told that the percentage that were given to me was the same as the percentage to everyone else.

Q Let's take three percent on $2.7 million, and if my arithmetic is correct, it would be $81,000 to be

divided among the four you of.

What I am trying to get at is if you made any calculation if this rewardwere increased by $81,000 as opposed to the risk you were taking in subordinating these securities?

A Your question, Mr. --

Q I am just asking if you did or didn't.

A Excuse me, Mr. Reilly. I find it very difficult if not impossible to answer your question without your defining what you mean by "the risk". That is one of the two terms in your question that you will have to define for me before I can answer your question.

THE COURT: I suppose in lay terms, Dr. Foley, what Mr. Reilly is asking is, did you think what you were doing was a good trade off for the additional $81,000 a year?

THE WITNESS: I didn't think in those terms.

Q Isn't it a fact that you didn't think in those terms as to the $81,000 and you never even made a guesstimate as to the options because you didn't believe you were taking any risk because of the formula that you understood was going to be in the basic agreement?

A I would like to have that question repeated, please.

(Question read)

MR. FRIED: I object to the form of the question.

THE COURT: It is a pretty complicated question.

THE WITNESS: The last part is the confusion, your Honor. I don't understand it.

THE COURT: Will you rephrase the question.

MR. REILLY: I will try.

Q Did you feel that because of the formula that you understood was to be in the basic agreement, that you were really essentially not taking any risk in this transaction?

A I would not say that, Mr. Reilly, but again I would have to tell you that I find it very difficult to know what you mean when you use the word "risk".

Q The risk that you might lose some or all of the subordinated securities?

A It's true, Mr. Reilly, that the formula that was built into one of the agreements was one, but not the only key factor in my decision to subordinate the securities.

THE COURT: What formula is that, Dr. Foley?

THE WITNESS: That is the formula that is the so-called protective cushion, tc which we referred

yesterday, your Honor.

THE COURT: All right.

THE COURT: But what I am saying, your Honor, is that although that was a significant consideration in my thinking, that was not the sole one.

THE COURT: I understand.

Q During those meetings did Mr. Rush say that Blair & Company was losing money because of the disarray and chaotic state of the records as well as other reasons?

A Yes. That is one of the reasons he gave for the fact that Blair was losing money. Yes, sir.

Q Didn't you understand that with records in such a condition of chaos and disarray, that it would be impossible to make a reasonably accurate computation of Blair's financial condition?

MR. FRIED: I object to the form of the question.

A He didn't tell me that.

Q I am not asking whether he told you. I asked did you understand that.

A No.

Q You thought that a reasonably accurate computation of Blair's financial condition could be made even though you were told that its records were in a condition of chaos

and disarray?

A I didn't say that, Mr. Reilly.

Q You didn't say that?

A That's right.

Q I will start over again.

Did you believe it would be possible to make a reasonably accurate computation of Blair's financial condition in early 1970?

MR. FRIED: I object to the form of the question.

THE COURT: Overruled.

A I assumed --

Q I am asking what you believed.

A I believed --

THE COURT: I think he can tell what he assumed and then tell us what he believed.

A I believed that the figures that were given to me were accurate.

THE COURT: I don't think that that quite answers the question.

MR. REILLY: No. I don't believe he's responsive at all.

THE COURT: Mr. Reilly said: In light of the fact that Mr. Rush told you, as you have said that he did,

that the records of the company were in a chaotic condition or a state of disarray -- is that correct?

THE WITNESS: No, he didn't use that term, your Honor.

MR. REILLY: I beg your pardon. He did so testify.

THE COURT: Mr. Reilly says you testified that way.

Q You are saying he didn't tell you that Blair was losing money because of the disarray and chaotic state of the records.

A That is just what I am trying to tell you.

Q Did he say that or didn't he say that?

A He didn't use the term chaotic or chaotic disarray. He didn't use those terms. He told me --

Q Was that the import of what he said?

MR. FRIED: Let him finish his answer.

Q Was that the import of what he said?

A No, I would say not.

THE COURT: Well, will you tell us what he did say on the state of the records of Blair?

THE WITNESS: To the best of my recollection, your Honor, he stated that there were books and records problems, but that these were in the process of being cleared

up. In other words, my understanding wasn't that they were completely out of control. He never used that term to me. Had he done so, I would have stopped discussions immediately, obviously.

Q But wasn't that implicit in what he did tell you?

A No, sir. I would say not.

Q Do you recall your deposition being taken in this action under oath on April 9, 1973, by me and with respect to Mr. Rush, being asked the following question and giving the following answer:

"Q Do you mean you understood the firm was losing money because of the disarray or chaotic condition of the records?

"A That was one of the assumptions that -- one of the implications in his comments. That is right, sir."

Do you recall being asked that question and giving that answer?

A I don't recall, sir.

MR. FRIED: I object, because that was not the language Dr. Foley testified was used by Mr. Rush.

THE COURT: What was the answer?

MR. REILLY: "A That was one of the assumptions -- one of the implications in his comments.

That is right, sir."

THE COURT: Do you recall that question and answer?

THE WITNESS: I don't recall it in those terms,your Honor, but I recall he asked me a question --

THE COURT: I take it you agree that what is in the transcript is what you said.

Q You don't question the transcript?

A No, sir.

Q Did Mr. Rush say anything to you about the progress being made by Mr. Morpurgo on the resolution of the records problems?

A Yes, he did.

Q Tell me what he said.

A Well, he said that Mr. Morpurgo had worked, I believe, for the Midwest system prior to his having -- or some affiliated organization prior to his employment at Blair and that he had been employed with the specific understanding or specific request that this was his major mission in his new job at Blair, and he told me, most important of all, that these problems were in the process of being cleared up and that by May 1st --

MR. REILLY: Excuse me, your Honor, if I can interrupt.

I don't think the witness is being responsive to my question. Perhaps my questions wasn't clear.

Q All I am asking is, did Mr. Rush say anything about the progress being made by Mr. Morpurgo on the records problem?

THE COURT: Mr. Reilly would like to distinguish between what Mr. Morpurgo's expertise was and what he was actually accomplishing, is that right?

MR. REILLY: That is right. What he was informed he was accomplishing.

THE COURT: Did Mr. Rush tell you what Mr. Morpurgo was actually accomplishing, rather than how good he was?

THE WITNESS: I don't recall his having singled out Mr. Morpurgo's accomplishments from the accomplishments of the other firm that was in there concurrently with Mr. Morpurgo, and any other parties who might have a hand in attempting to turn Blair around. I don't recall his ever having made any statement that would enable me or him or anyone else to single out Mr. Morpurgo's accomplishments and performance from the performance and contributions and accomplishments of the entire group.

Q I understood from your testimony earlier that Mr. Rush did tell you that Blair was losing money.

A At the time, yes, sir.

THE COURT: Which time would that have been?

THE WITNESS: That would have been --

Q Prior to April 3rd?

A In February and March of 1970.

Q Was it Mr. Rush who made the prediction that hopefully the firm would be in the black by May, and more certainly in June?

A Yes, sir.

Q Did he ever tell you how much money Blair was losing per month?

A No, he didn't.

Q Did you ever ask him?

A Not that I recall, no.

Q Wasn't it of any interest or concern to you whether Blair was losing $10,000 a month or $1 million a month?

A It was of concern to me, Mr. Reilly.

Q Then why didn't you ask him?

A Pardon?

Q Why didn't you ask him?

A Because he had told me that they were going to be in the black by May 1st or June 1st, for sure.

Q And you knew that that was nothing but his prediction and that he could not possibly guaranty it? Didn't you know that?

A I didn't ask him to guaranty it, Mr. Reilly.

Q I am asking if you knew that he could not guaranty it?

A Yes, I knew that he could not guaranty it.

Q And still you didn't ask him anything of the range of monthly losses that were being experienced by Blair, whether they were $10,000 a month or $1 million a month?

A That is correct, sir.

Q Did you ask Mr. Rush any questions as to what measures were being taken in order to correct the situation so that it would become a profitable operation by May or June?

A I think I have already testified about Mr. Morpurgo and the conversion from one system to the other.

Q Aside from the retention of Mr. Morpurgo to help straighten out the books and records.

A And the conversion to the Midwest system.

Q But I'm asking you: Did you ask Mr. Rush whether they were doing anything else in order to --

A The only other thing that I recall we discussed

was his -- the firm's, that is, Blair & Company's, employment of some other consulting organization that had some expertise in this area, but we never got into that in great detail.

Q Well, in your twenty-odd years of experience in the investment community, aren't you at least familiar with the concept --

THE COURT: I will sustain the objection. Dr. Foley has not testified that he was in the investment community.

MR. REILLY: Thank you.

Q You are aware, aren't you, and were in April, 1970, that a firm like Blair earns money in different ways, such as commissions or customers transactions?

A Yes, sir.

Q To name one.

A Yes, sir.

Q Underwritings, to name another.

A Yes, sir.

Q Private placements, perhaps, to name a third, if they engaged in them; is that right?

A Yes.

Q Did you ask Mr. Rush at the time he made this prediction of things to come,any questions concerning

commission income of Blair, at what level it might be sustained, whether it was going to go down or whether it was anticipated it would increase -- anything like that?

A No, sir.

Q Did you ask him any questions about underwriting that may be undertaken by Blair, underwritings of any magnitude, or the profitability of any underwritings or the earnings that might be accrued from any underwritings?

A I didn't.

Q Did you ask him any similar questions with respect to private placements that might be made by Blair?

A I didn't know that they made private placements, Mr. Reilly, but I asked him no such questions.

Q Did you ask him any questions about sales efforts that might be made, such as hiring additional registered representatives or having any sales incentive campaigns -- anything like that?

A I didn't discuss that with him.

Q Did you ask him any questions about commodities that might be effected in order to straighten out a losing operation into a profitable one?

A No, I didn't discuss that.

Q Such as getting rid of unprofitable branches or

anything like that?

A No, I didn't.

Q Nothing like that?

A No.

Q Did you know on April 3rd that Blair had been operating in the red since January 1, 1970?

A I'm not sure, Mr. Reilly, that I knew that they were in the red in January. I knew that they were in the red in February and March. It is conceivable that I did. It's quite likely. It's quite possible.

Q It's quite possible?

A Yes, sir.

Q I would like to know if I read a few questions and answers in the lawsuit that you now have pending against Mr. Vanderbilt and others, whether this would refresh your recollection.

"Q As of April 3, 1970, you knew that the operating results of Blair for the preceding months had been bad?

"A How many months are we talking about there, Mr. Barist?

"Q Since January of 1970.

"A You mean the first three months?

"Q The first three months.

"A Were bad?

"Q Yes, sir.

"A And what do we mean by bad?

"Q Had been unfavorable.

"A In the red, you mean?

"Q Yes, sir.

"A Yes, sir, I was aware of that."

Do you recall that testimony?

A I think I do. What was the year in which I gave that testimony, Mr. Reilly?

Q This particular testimony was given on May 9, 1972.

A I see. Thank you.

THE COURT: What page were you reading at?

MR. REILLY: I beg your pardon, your Honor. I was reading from page 535.

Q Did you ask anyone, on or prior to April 3rd how deep in the red Blair had been operating since the first of the year?

A I don't recall having asked that specific question, Mr. Reilly.

(Pause)

Q Didn't you at least concern yourself with the amount of such cumulative losses?

MR. FRIED: I object to the form of the question.

THE COURT: Cumulative losses?

MR. REILLY: I meant the continuing losses from January to April 3.

THE COURT: Losses, l-o-s-s-e-s? I didn't hear you.

MR. REILLY: I'm sorry.

THE COURT: The objection is overruled.

MR. FRIED: I am objecting to the words "at least," your Honor, because I think it has a connotation.

THE COURT: Will you repeat the question without the words "at least"?

MR. REILLY: I don't remember how I used it.

THE COURT: Didn't you concern yourself with the cumulative losses from January through April?

THE WITNESS: I naturally concerned myself with the -- I beg your pardon. I was naturally concerned with whether or not Blair was losing money and whether or not the losses were continuing and whether or not the losses were going to diminish and cease.

Q You mean you concerned yourself even with the

further losses that might be anticipated until, say, June, when it was expected to be a profitable operation?

A In the turnaround. I was interested in the -- in the word "concern" I am trying to avoid an ambiguity, Mr. Reilly, in my statement.

Q Well, let me see if we can avoid it by referring to your testimony in this deposition in this action at page 95. To put it in context:

"Q You did understand that the operating losses were anticipated to continue until about June 1st?

"A May 1st or June 1st.

"Q May 1st or June 1st?

"A That is right, sir.

"Q Did you ask any questions as to the magnitude of the losses that they anticipated?

"A I don't recall concerning myself with that."

A That was the other meaning of the term "concerned."

Q I am using it in the same sense in which you meant it.

A Well, I would have to beg the Court's indulgence in asking for permission to give two different meanings of the term "concern" here.

THE COURT: We understand the two different meanings and I think Mr. Reilly is asking about one of them.

That is, did you concern yourself, not were you concerned about.

THE WITNESS: I did not concern myself, but I was concerned about. That is the distincition I am trying to make, your Honor.

THE COURT: All right. That answers the question.

Next question.

MR. REILLY: What is the answer?

THE COURT: The answer was he did not concern himself with the losses but he was concerned about the losses.

Q Do you mean to say that you were concerned about the losses that they anticipated and you still can answer "I don't recall concerning myself with that."?

A That's the other meaning of the term that his Honor --

MR. REILLY: I beg your pardon, your Honor. I don't see the difference. This witness seems to think --

THE COURT: It is not a matter of whether you see the difference or not. That is his answer to the question. You can ask him the next question.

MR. REILLY: All right.

Q In any event, you didn't ask any questions about

what the anticipated losses might be or what the estimated losses were?

A Anticipated as of what time, Mr. Reilly?

Q The anticipated losses that would continue through May, perhaps June.

A No, I did not ask any questions about that. But I think it is clear --

Q You answered my question.

A Okay. I'm sorry.

Q Isn't it true that you did not concern yourself with the anticipated losses because you understood that your cushion, in your formula, provided all the protection you needed?

A I would say that the latter part of your question, following the word "because," was one but not the only reason why I did not ask questions about the losses.

MR. REILLY: May I see Exhibit 2, please?

(Pause)

Q I show you the Blair financial report, which has been received in evidence as Exhibit 2, which I understood you received in early February 1970.

A To the best of my recollection, yes, sir.

Q Did you read it?

A Yes, I did, Mr. Reilly.

Q Did you have any reason to question anything about it?

A No, I did not.

Q There was nothing in there that was unclear or ambiguous?

A I had no reason to question anything about it.

Q Was there anything in there that was unclear or ambiguous?

A There was not, to me, at the time I read it.

MR. REILLY: May I have just a moment, your Honor? I want to try to get these marked in advance.

THE COURT: All right.

(Pause)

Q I show you a document I've marked Exhibit B for identification.

(Pause)

THE COURT: Do you recognize this, Dr. Foley? I don't think you have to memorize it.

THE WITNESS: I have seen it, your Honor, but I don't recall it.

THE COURT: What are your questions, Mr. Reilly?

Q Can you identify that document as one you received?

A I have seen it.

Q Do you recall when for the first time you did see that?

A No, I do not remember, Mr. Reilly.

Q You referred in your earlier testimony to having received from Mr. Rush various income statements or operations statements. Is this one of them?

A I don't recognize it as such, Mr. Reilly. It is conceivable that this is one of the things he showed us, although, to the best of my recollection, what he showed us was on a simpler piece of paper and was handwritten. Although it is conceivable that this is one of the things that he showed us. It is possible. I do not deny that.

Q I direct your attention to the heading at the top, "Statement of Income, February 1970." And if you will look at the bottom of the first column of figures from the left, do you see the figure $1,248,220 in parentheses? What does that signify to you?

MR. FRIED: I object to this, your Honor, unless there is some evidence to the effect that this document was received by him prior to April 3.

THE COURT: I'll allow it subject to connection, which I assume will be accomplished.

Is that right, Mr. Reilly?

MR. REILLY: I'm sorry. I haven't offered it in evidence. I overlooked it.

THE COURT: I didn't just mean that. I assume that you are going to establish that this actually was shown to the witness, although he said it might have been shown to him.

MR. REILLY: I have a witness who will say that he handed it to him and he read it.

THE COURT: That's what I am saying: subject to connection.

MR. REILLY: I offer it in evidence.

THE COURT: Subject to connection, it is received.

xxx (Defendants' Exhibit B for identification was received in evidence.)

THE COURT: Ladies and gentlemen, it is worth my noting, in a long trial, that, as I indicated yesterday, it is notpossible always to put the case before you in the chronological order that everything took place. Therefore, sometimes we have to allow matters to go into evidence or statements to be made subject to connection, that is, as in this case, for example, to show by some later witness that Dr. Foley actually had been given this exhibit on a previous occasion.

MR. REILLY: I understood the witness' answer to be that he probably had seen it.

THE COURT: No. He said he wouldn't deny that he had seen it and it might be one of the things he had seen.

MR. REILLY: All right.

THE COURT: And I think you asked him if he knew what that figure $1,200,000 in parentheses meant, and he said it was a loss.

THE WITNESS: That's right, sir.

Q That is a loss for the current month?

MR. FRIED: I object, your Honor. He is asking him to explain a document which was prepared by somebody else.

THE COURT: Well, I think he can ask what the document meant to the witness.

MR. REILLY: Right.

THE COURT: I think that's the way to put it.

Q I only wanted to know if for the current month, February, Blair lost $1,247,220.

MR. FRIED: I object to that unless it has been shown it is prior to April 3, your Honor.

THE COURT: Overruled. The statement is for February 1970.

MR. FRIED: Your Honor, it is when he acquired knowledge.

THE COURT: I understand now.

THE WITNESS: Your Honor, --

THE COURT: Just a minute, please.

MR. Reilly, do you expect to be zble to establish that Dr. Foley was shown this document before April 3rd?

MR. REILLY: Yes, sir.

THE COURT: Subject to that connection, the objection is overruled.

Do you understand the question?

THE WITNESS: Yes.

THE COURT: Will you answer the question?

THE WITNESS: Yes. There was a loss figure for the month, according to those figures.

THE COURT: No. Did you understans when you saw that that the loss indicated was for the month of the exhibit?

THE WITNESS: That was my understanding at the time, yes, sir, your Honor.

MR. FRIED: Your Honor, I still object on the ground that there is no testimony here that he saw it at the time. If he saw it in the course of the litigation,

that doesn't prove anything.

THE COURT: I asked Mr. Reilly whether he expects to prove independently that Dr. Foley was shown this document before April 3rd, 1970, and he said yes. If he does not prove that, I will advise the jury that they are to disregard the question.

MR. FRIED: But he is asking him whether he understood, presumably at that time, in February, that this constituted a loss.

THE COURT: Not in Feburary. At the time it was shown ot him.

Isn't that right, Mr. Reilly?

MR. REILLY: Yes, your Honor.

THE COURT: Objection overruled, Mr. Fried.

Now let me be sure I understand it. Whenever it was that it was shown to you, you did understand that there was a loss for the month indicated in the exhibit, is that right?

THE WITNESS: That's right, your Honor.

THE COURT: In the amount shown.

THE WITNESS: Yes.

THE COURT: This would be a good time to take the afternoon recess.

THE WITNESS: Your Honor, could I make a

comment to you in person?

THE COURT: No. I'm sorry. It is not proper.

THE WITNESS: I do have a relevant comment that I think might be -- if I may make it now.

THE COURT: No. Let me explain to you how this works.

THE WITNESS: Okay.

THE COURT: I know that we lawyers have peculiar habits which have been developed over a thousand years and we can't get over them.

Mr. Fried will have an opportunity on redirect to bring out anything that he feels is necessary to put your testimony in the light that you wish it to be put into.

THE WITNESS: Okay.

THE COURT: Ladies and gentlemen, you are excused at this time.

(Recess)

THE COURT: Ladies and gentlemen, before Mr. Reilly resumes his questioning, I understand there is a question as to whether it is permissible to take notes or not.

The answer is it is permissible to take notes,

but it will not be permissible when the time comes to deliberate in the jury room to take notes in with you, and I'll explain the reason for that, which is not intended to be arbitrary.

It is that when you are deliberating, if somebody says, "Oh, I have it right here in my notes," there is a likelihood that somebody will be relying on those notes without our knowing whether they are accurate or not.

They won't be available to you, but at the time of your deliberations you will have an opportunity to hear any testimony read back precisely as it was given.

So, if it helps you to have facts stick in your mind by taking notes, that is up to you. But before the deliberations commence you have to leave the notes behind.

CROSS EXAMINATION CONTINUED

BY MR. REILLY:

Q I had referred earlier to an affidavit which, among other things, contains the phrase --

MR. FRIED: May we have the date of the affidavit, when it was made?

MR. REILLY: November 6, 1970, the one containing the phrase "through my many years in the financial world."

Q I show you another copy of that affidavit --

MR. FRIED: We submit that that has nothing to do with the investment experience in the financial world, your Honor.

THE COURT: I don't know what is happening here.

MR. FRIED: I think it is wholly improper.

THE COURT: Let Mr. Reilly finish his presentation and I'll rule.

MR. REILLY: I simply wanted to ask the witness if he could identify the signature on the last page as being his.

THE COURT: Go ahead.

MR. REILLY: It is the affidavit that contains the phrase --

THE COURT: Never mind what it contains. Ask him if he signed that affidavit. Then, if you want to put it in evidence and read from it, you can.

Q I show you that affidavit and ask you if that is your signature on the last page.

THE COURT: Is it marked for identification?

MR. REILLY: I did not plan to offer it in evidence, your Honor.

THE COURT: No. Let him answer the question

and then let's mark it for identification.

A This is my signature.

THE COURT: It is?

THE WITNESS: Yes, sir.

THE COURT: All right. Would you mark it for identification, Mr. Brooks? What exhibit will that be?

MR. BROOKS: E for identification.

THE COURT: Thank you.

xx (Defendants' Exhibit E was marked for identification.)

Q I hand you Exhibit C for identification, which appears to be an April 9, 1970 letter to you from Mr. Rush to which are annexed two sheets of financial data.

(Pause)

THE COURT: What is the question, Mr. Reilly?

Q (Continuing) Have you read that?

A I have just read it. I have read the letter, yes, and looked at the accompanying sheets.

Q Do you recall receiving that a day or two after the date it bears, the date it bears being April 9?

A I am not sure I received it at all prior to the onset of our litigation, Mr. Reilly.

Q You don't recall seeing it until after this lawsuit was started?

A I'm not sure. To the best of my recollection, I did not receive it prior to the onset of this litigation, or the other litigation.

Q Do you recall in your examination before trial in this case being asked the following questions concerning that document --

MR. TURETSKY: May we have the date and page, please?

MR. REILLY: Page 114, on April 9, 1973.

MR. TURETSKY: Thank you.

Q (Continuing) (Reading)

"Q I show you the document marked Defendants' Exhibit A for identification adn ask when for the first time you saw that or the original of that, that exhibit being a Xerox.

"A I don't recall when I saw it, Mr. Reilly, but from the date I would assume I aw it in April, after April 9th, probably the 10th or 11th or 12th, assuming it was mailed as of that date."

Do you recall giving that testimony?

A Yes, I recall giving that testimony.

MR. FRIED: Your Honor, I submit, the answer is totally incomplete and I think it is unfair and I think he ought to read the rest of it.

THE WITNESS: Read the rest of it.

Q I certainly didn't intend to be unfair. The answer continues: "In other words, I s-w it after the closing. I would assume I saw it after the closing."

MR. TURETSKY: Next question, please, Mr. Reilly.

MR. REILLY: The next two?

MR. TURETSKY: Yes.

MR. REILLY: (Reading)

"Q When you received the two financial statements enclosed with this letter, did you read them?

"A I don't recall whether I did or not."

Do you want me to read any more?

MR. FRIED: Read the rest of it relating to this letter.

MR. REILLY: Your Honor, there is about twenty pages of deposition concerning that letter. I am merely trying to --

THE COURT: I understand. I would rather you not read twenty pages about the letter. It can be read on redirect examination. But if there is a little more you want to read, Mr. Fried, to make it clear --

MR. FRIED: On page 116 the witness said: "I don't know when it was received."

THE COURT: Where is that?

MR. FRIED: Page 116. The witness said, "I don't know when it was received."

THE COURT: All right.

THE WITNESS: And that is my testimony today, your Honor.

THE COURT: All right. The jury understands --

Q You also said, "I don't know when I read this figure, because I told you I don't recall when I looked at the document, but I can infer that I looked at it in April of 1970, after the closing."

THE COURT: What page is that, sir?

MR. REILLY: Page 116. I am not trying to establish he saw it before the closing.

THE COURT: I understand.

Mr. Fried, is there something more you want to read? I mean, the testimony is --

MR. FRIED: I will bring it out on redirect, your Honor.

THE COURT: Very good.

MR. REILLY: I offer this in evidence.

MR. FRIED: I object to it, your Honor, at this time without the proper foundation.

THE COURT: I can't receive it without the

proper foundation that it was ever seen and when it is disputed that it was sent.

Is it disputed that it was sent?

MR. FRIED: Yes, your Honor, because he said he never received it.

THE COURT: All right. I sustain the objection at this time.

(Continued on next page)

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Q Is it your testimony that you did not receive the original of this letter addressed to you from Mr. Rush?

A I said, Mr. Reilly, I did not recall having received it.

Q You don't deny that you received it on or shortly after the date it bears?

A I can only give you my testimony. The import of the statement that you read was that if I received it, I obviously received it two or three days after the date that it bears, but that I am not sure that I received it.

Q You are not?

A That was my testimony then, and that is my testimony today.

MR. REILLY: Your Honor, I offer it only subject to it having been sent or mailed to him. Mr. Rush will so testify, and I represent to the Court that this is a copy of the original, not a file copy which was produced --

THE COURT: Well, in view of the cloudy state of the record on the point, I think it is better to keep it out until Mr. Rush testifies. When he testifies, we will see.

Q Can you recall when for the first time you did read this letter?

A No; I cannot, sir.

Q Some time after the commencement of this litigation?

A I'm not sure, Mr. Reilly. That is my testimony.

Q You also testified this morning about the March 10, 1970 letter, Exhibit 15, and you stated that you had not seen that prior to April 3, 1970.

Do you recall that?

A That was the letter sent by the Stock Exchange to Mr. Ramsey?

Q Yes, sir.

A I went beyond tha t, Mr. Reilly. I said I had not seen that prior to the initiation of our litigation.

Q Of this lawsuit?

A That is right, sir. Well, of one of our lawsuits. Let's say that. I'm not trying to be technical, but it could have been -- I could have seen it. There have been several lawsuits, as you know.

Q Yes.

A My testimony --

THE COURT: It was well after the closing, anyway; is that right?

THE WITNESS: Oh, 'way after the closing.

Q Are you really certain of that?

A Yes. One hundred per cent.

Q You have no doubt about that?

A None whatsoever.

Q You are positive?

A Yes.

Q Absolutely certain?

MR. FRIED: Your Honor, how many times does he have to ask him on that same point?

MR. TURETSKY: Your Honor, it is precisely what he testified to before.

THE COURT: Please, Mr. Turetsky.

MR. REILLY: I have had marked for identification, your Honor, as Defendants' Exhibit D, the transcript of the proceedings in the bankruptcy matter of Blair.

THE COURT: D for David?

MR. REILLY: Yes. -- of November 3, 1971, the first page bearing the certification of the court reporter who recorded those proceedings.

THE COURT: Well, that does not mean anything if it is disputed. I don't know that it will be disputed. If it is, we will have to get the reporter.

MR. REILLY: I have furnished counsel a copy. I would like to hand up a copy to the Court, and I would like to offer the marked copy in evidence as Exhibit D.

MR. FRIED: I object at this time, your Honor. The only purpose of this would be to show any inconsistent statement, and to offer the whole record --

* * *

MR. FRIED: The letter.

THE COURT: Mr. Reilly and Mr. Brooks are talking about this transcript which I hold in my hand. They want to put it in evidence. I can't rule because I haven't seen the whole transcript.

MR. BROOKS: Can we read those portions and block out the remainder of it?

THE COURT: I think the easiest way, when the time comes, is to make an excerpt of those portions and put it in as an exhibit, which I will approve after I ascertain that it is proper. Sooner or later, I will allow the jury to look at it or read some portion of this transcript. At the present time I will allow you to read it to them, if you wish to.

All right, gentlemen.

(In open court:)

THE COURT: Thank you, ladies and gentlemen. I am sorry to keep you waiting.

Ladies and gentlemen, I have ruled that Mr. Reilly is entitled to put into evidence certain portions of the transcript of the proceedings in the Blair bankruptcy which occurred on November 3, 1971, at which time Mr. Foley appeared as a witness, but since the material that I have ruled on constitutes only a small portion of this transcript, he will read to you that portion rather than put the document physical-

ly into the record.

MR. REILLY: Starting at page 122, line 16, continued direct examination:

"Q Mr. Foley, at the last examination, the Court directed you to produce certain documents. Have you produced those documents?

"MR. FELDMAN: The documents are in court, your Honor.

"Q You have collected all your documents from your attorneys?

"A Mr. Feldman has the documents, and I have brought my Blair statements which you asked me to bring."

Page 128, line 15.

"MR. FELDMAN: The documents which were furnished to Dr. Foley by Blair during the period ending April 3, 1970, and by Blair it is intended to mean by mail or by Mr. Vanderbilt, Mr. Ramsey, Mr. Rush and Mr. Richardson, and are as follows:"

Page 130 --

THE COURT: I think we may say that Mr. Feldman then in the transcript gave a long list of documents which Dr. Foley had received from Blair, and it continues up to the point at which Mr. Reilly is now going to read.

MR. REILLY: Page 130, line 7:

"A letter dated March 10, 1970, on the letterhead of the New York Stock Exchange, addressed to Mr. James B. Ramsey, Jr., Blair & Co., Inc., and signed by a Robert M. Bishop."

Page 135: a question addressed to Dr. Foley:

"Q Mr. Foley, I show you the documents which Mr. Feldman produced and ask you whether these are all of the documents which were furnished to you by Blair or its representatives during the period of the negotiations through April 3, 1970.

"A I am not sure that these are all of them. Certainly, they are most of them."

BY MR. REILLY: (Continuing)

Q Did you understand, Mr. Foley, that at the time of that examination you were under oath?

A Yes, sir.

Q Did you testify truthfully in response to the questions addressed to you?

A I did to the best of my ability; yes, sir.

Q You were present at the time your counsel, Mr. Feldman, produced and identified specifically each of the documents including the March 10th letter. You did not absent yourself from the room?

A That's correct, sir.

Q You heard him speaking?

A That's correct, sir,

Q And you didn't raise any question whatever about that March 10th letter?

A I could make a comment that I think would be relevant, if I am permitted to do so, Mr. Reilly.

Q Just answer my question, sir.

A Would you repeat your question?

Q You did not make any comment when --

A I do not recall having made a comment; no, sir.

Q And it is your testimony today, under oath, that you did not receive that March 10th letter --

A Yes, sir.

Q -- on or prior to April 3rd?

A One hundred per cent.

MR. REILLY: May I have Exhibit 13?

Q I hand you Exhibit 13, as to which you have testifie Your counsel read the entire letter to the jury this morning, and I would like to address your attention to one specific sentence, the second one in the second paragraph, which reads:

"I am familiar withthe fact that Blair & Co., Inc. has books and records problems as a result of conversion to the Midwest Stock Exchange Service Bureau and that the New York Stock Exchange has placed restrictions upon

Blair & Co., Inc., as set forth in its letter of March 10, 1970."

Do you see that?

A I see that, Mr. Reilly.

Q This is a letter that bears your signature?

A That's right.

Q And it is still your testimony that you were not familiar with he contents of the March 10th letter when you signed the April 3rd letter?

A Yes, sir.

Q Did you notice the addressee of this letter, Exhibit 13?

THE COURT: Did he notice it when?

Q (Continuing) -- when you signed it?

A I didn't pay any attention, really, to whom it was addressed, Mr. Reilly. I was told it was perfunctory.

Q You were told it was perfunctory?

A Yes, sir.

Q Well, the second sentence in the paragraph that I just read: is that a true statement?

THE COURT: Would you read the sentence for us?

MR. REILLY: The sentence reads:

"I am familiar with the fact that Blair & Co., Inc. has books and records problems as a result of conversion

to the Midwest Stock Exchange Service Bureau and that the New York Stock Exchange has placed restrictions upon Blair & Co., Inc., as set forth in its letter of March 10, 1970."

THE COURT: Does that mean that regardless of the March 10th letter, did he in fact on April 3rd know of the problems listed in the April 3rd letter?

MR. REILLY: As set forth in the March 10th letter. It isn't simply restricted to books and records problems. It is the problems as listed in the letter of March 10th.

Q I am asking you whether that is a true statement.

A I'm not sure I know the meaning of your question, Mr. Reilly.

Q You don't know the meaning of my question whether or not that is a true statement?

A There are a number of different possible interpretations of your question.

Q Just a moment --

THE COURT: I would suggest you break it up and ask him, did he know on April 3rd this and that?

Q Well, I refer specifically to the March 10th letter. Did you know on April 3, 1970 -- I am quoting from the March 10th letter:

"Figures on customers' debits and credits, bank

loans, aggregate indebtedness and probably many other items are not reliable. As a consequence, it is impossible to compute any meaningful capital position for Blair & Co., Inc."

Did you know that?

A No; I did not.

Q Reading on from the March 10th letter:

"Additionally, attention is called to the fact that your firm has not responded to a special financial questionnaire which was due on February 13, 1970."

Did you know that?

A No.

Q Similarly:

"A response to the special operations questionnaire of February 1970 is long overdue, as stated in the March 10th letter."

Did you know that as of April 3rd?

A No.

Q Reading on from the March 10th letter:

"We are fearful that the records of Blair & Co., Inc. are in such condition that you are in danger of losing control of customers' accounts and the ability to properly supervise registered representatives."

Did you know that?

A No; I did not.

Q Reading on from the March 10th letter:

"Accordingly, we feel that steps must be taken promptly to curtail the volume of your firm's business until such time as the condition of the books and records is significantly improved."

Did you know that on April 3rd.

A I did not.

Q Continuing from the March 10th letter:

"To this end, the Exchange will not consider the approval of any new registered representatives of additional branch offices except in those instances where your firm is already committed."

Di you know that?

A I knew a little bit about that, because on one occasion in the course of our discussions prior to April 3rd, 1970, Mr. Vanderbilt had referred to the fact that Blair was not being allowed to expand its business. That was the term I believe he used. Now, whether or not he meant by that the hiring of additional registered representatives or the establishment of additional branch offices or both I don't know, and I did not inquire, but I do recall his having mentioned that to me; but he did not mention that that was a restriction imposed upon Blair by the New York Stock Exchange.

Q Yes you state in your April 3rd letter that you are familiar with the fact that the New York Stock Exchange has placed restrictions upon Blair, as set forth in its letter of March 10th.

MR. FRIED: I object to the form of the question, your Honor, especially the word "yet".

THE COURT: Sustained.

Q Reading on from the March 10th letter:

"Additionally, you" -- that is, Blair -- "are directed to refrain from any further advertising or promotional activities which might tend to increase your volume of business."

Did you know that on April 3rd?

A I didn't know that in those terms, Mr. Reilly. Only as that might be reflected in my previous answer.

Q Your previous answer didn't say anything about advertising and promotional activities, did it?

A My previous answer related to a curtailment of the expansion of the firm, and advertising would be related to that, I think.

Q Did you read the April 3rd letter before you signed it?

A Yes; I did.

Q Did you ask anybody about the March 10, 1970 letter

that is referred to in it?

A No; I did not.

Q You didn't raise any questions as to that with anyone?

A That's correct, sir. Not at the time. That's correct.

Q I am talking about on April 3rd.

A Yes, sir.

Q Not even with your own lawyer: Mr. Feldman?

A Yes, sir.

Q Why not?

A Because I trusted the people with whom I was in a closing situation with. I trusted Blair & Co.

Q Didn't you --

A I trusted the people I was dealing with, and I trusted the New York Stock Exchange.

Q Excuse me for interrupting. I did not realize that you had not finished.

Didn't you realize that the New York Stock Exchange, the recipient and addressee of the letter you signed, might be trusting you? Did that thought ever enter your mind?

A I'm not so sure I know what you mean by that question, Mr. Reilly.

Q You are not?

A No.

Q I will read the second sentence in the second paragraph again.

A Please do.

Q "I am familiar with the fact that Blair & Co., Inc. has books and records problems as a result of the conversion to the Midwest Stock Exchange Service Bureau and that the New York Stock Exchange has placed restrictions upon Blair & Co., Inc., as set forth in its letter of March 10, 1970."

A I don't understand what your question means.

THE COURT: What Mr. Reilly is asking you is this, Dr. Foley:

You have said you relied upon and trusted Blair and the Stock Exchange. Mr. Reilly is asking you if you might have thought when you read the Stock Exchange letter that the Stock Exchange was trusting you as having looked into and investigated this matter.

THE WITNESS: I didn't think of that, your Honor. I was a babe in the woods.

MR. REILLY: I move to strike the answer.

THE COURT: Overruled.

Q A babe in the woods, represented by able counsel.

A I will not characterize my counsel, Mr. Reilly. I think it would be inappropriate.

Q In any event, a babe in the woods represented by counsel throughout; is that right?

A I was represented by counsel.

Q Leonard Feldman?

A That is right, sir.

Q In fact, Mr. Feldman represented you in connection with this matter for a long time, didn't he, starting at, say, January 1970?

A Yes; he did. He was in on the initial discussion.

Q He represented you throughout all or substantially all of the negotiations you had with Blair?

A That is correct, sir.

Q In fact, he really negotiated the agreement for you, didn't he?

A I wouldn't put it in those terms.

Q Did he negotiate substantially all the terms of the agreement on your behalf?

A I would not characterize it in that fashion.

THE COURT: How would you characterize it?

THE WITNESS: I would say that I, acting on behalf of Mrs. Foley and Mrs. Salisbury and J. P. Foley & Co., Inc., myself, I negotiated with representatives of Blair the concepts that were to be embodied in the agreements that were subsequently signed, and that it was Mr. Feldman's role to be

present at those negotiations to make any suggestions that he felt inappropriate, and then to work closely with Mr. Richardson, the Blair attorney, in reducing these conceptualiz agreements to writing.

(Continued on page 310.)

Q Do you recall in your deposition in the pending matter you have against Vanderbilt and others, on May 5, 1972, at page 261, being asked this question and giving this answer:

"Q Who is the best person to give me that?

"A Mr. Feldman can give you a far better answer to this question than I can because he is more conversant with the law, he is more conversant with much of the information with respect to this case."

A What is the question?

Q Wait a minute. Let me finish, please.

MR. FRIED: I object to this, your Honor.

THE COURT: Just a minute. I'll allow Mr. Reilly to read the deposition and then, when you hear the question, I will determine whether it is appropriate or not.

Q (Continuing) "And he negotiated the deal with the people at Blair on my behalf. These are the reasons why he is better informed than I am in respect to this."

THE COURT: What is your question, Mr. Reilly?

Q (Continuing) I ask you whether you recall being asked that question and giving that answer.

A I don't recall. But it is quite likely that that was my testimony, Mr. Reilly.

Q Was that truthful testimony, the portion where you say "He, Feldman, negotiated the deal with the people at Blair on my behalf."?

A In terms of the meaning that I've attempted to convey, the answer would be yes.

Q Mr. Feldman also represented you at the closing, did he not?

A Yes, sir.

Q I believe that he has also represented you after the closing in connection with this subordination, is that right?

A The subordination?

Q In connection with your subordination of securities with Blair, Mr. Feldman represented you even after the closing.

A For a period of time, yes, sir.

Q For how long a period of time?

A (No response)

Q Let me see if I can help you on this. Did he represent you in an action you brought in the Supreme Court in New York County to enjoin the disposition of securities in your subordinated account?

MR.FRIED: I submit, this is not relevant to this case, your Honor.

THE COURT: It is not irrelevant. He is trying to refresh the witness' recollection as to how long Mr. Feldman represented him.

But can you remember how long he represented you?

THE WITNESS: He was my attorney at that time, yes, sir.

THE COURT: Can you remember how long, so we don't have to go through item by item?

THE WITNESS: My best estimate, your Honor, would be that Mr. Feldman represented me through the arbitration proceedings before the so-called -- the panel appointed by the New York Stock Exchange. That would be the best of my recollection.

THE COURT: That would be some time in 1970?

THE WITNESS: That would be in August, your Honor.

THE COURT: 1970?

THE WITNESS: Yes, sir.

THE COURT: And not thereafter? Is that what you are saying?

THE WITNESS: At some time at the end of August or early September, when we started the actual litigation, he was no longer the attorney representing me.

THE COURT: Thank you.

Q Do you recall your deposition being taken in this

action, long after that date: April 9, 1973, by me?

A Yes; I do.

Q Who represented you then?

A Milberg & Weiss.

Q Who was the individual lawyer who appeared, the only lawyer who appeared on your behalf at that deposition?

A I don't recall, Mr. Reilly.

Q Let me show you page 2 of that transcript.

A I know Mr. Feldman came down with me on certain of the depositions that were held after I had appointed Milberg & Weiss as my attorneys in this action.

MR. FRIED: Your Honor, I submit this is wholly immaterial to the issue in this case.

THE COURT: Overruled. The word "wholly" is a strong word, Mr. Fried.

MR. FRIED: I beg your pardon?

THE COURT: I think it is peripherally material.

MR. REILLY: I assure your Honor the materiality of the letter will become even more apparent to counsel.

MR. FRIED: I doubt that.

THE COURT: I am not sure you can assure me it is going to become more material to Mr. Fried. It might become more material to the jury.

MR. FRIED: I said I doubt that, your Honor.

Q Late yesterday you were questioned concerning the formula which I believe you have sometimes characterized as a cushion.

A Yes.

Q A protective cushion?

A Yes, sir.

Q And at page 158 you said:

"The first loss against which protection was to be granted related to a loss in equity capital resulting from a deterioration in the market price of the stock."

Do you recall that testimony?

A Of the subordinated accounts. Yes; I do recall that.

Q Did you mean the market price of the stock in all the subordinated accounts?

A Yes; yes.

Q Not just your own?

A That is right, sir.

Q And is it your position that by liquidating securities in a subordinated account, your protection disappeared?

A That's what my attorneys have told me.

Q Is that your position?

A I'm not an expert in this field, and I have no expertise, nor do I claim any, Mr. Reilly.

Q But did you understand, prior to the time you signed the contract documents on April 3rd, that there was such a provision in one or more of the documents?

A Yes, sir.

Q Can you tell me now where that provision is?

A It is in one of the agreements.

Q Which one?

A I don't know. I would have to consult the documents or ask my attorneys to find it.

MR. REILLY: I would be willing to accept your attorney's statement. I would like very much to question you concerning that, whatever provision in whatever contract document gives you that protection, which you understood was going to be in there before you signed it.

Can you furnish it?

MR. FRIED: I would be glad to be Mr. Reilly's assistant at this trial, but I have to look at it, myself.

THE COURT: Are you saying, Mr. Fried, that you are not sure which clause Mr. Reilly is referring to?

MR. FRIED: I think I have an idea, but I have to look at it.

THE COURT: Why don't you show him the clause that you think it may be in and see if that is the one that he means?

MR. FRIED: If your Honor will give me a moment --

THE COURT: Of course.

MR. FRIED: I hope it turns out that I get compensation for this, Mr. Reilly.

(Pause.)

MR. FRIED: There are a number of withdrawal provisions and rights, your Honor.

THE COURT: Yes; I know that, Mr. Fried.

MR. FRIED: Plaintiffs' Exhibit 9.

THE COURT: Why don't you show Mr. Reilly what you think he may mean, and he can say if he does. If he does, he can ask a few more questions before we break up for the evening, or perhaps the best way would be for --

MR. FRIED: May I show it to the witness?

THE COURT: Yes.

MR. FRIED: I think Paragraph C.

THE COURT: These documents are hard to read.

(Pause.)

MR. REILLY: I am sorry. I did not hear you.

THE COURT: May I ask, as a matter of curiosity, whatever happened to the originals of these documents?

MR. REILLY: I wish I could answer. I don't know. Certainly, the New York Stock Exchange did not receive them, and I assume that perhaps the liquidation of Blair and various

files -- they have been marked in so many court proceedings, I am not sure.

THE COURT: All right.

THE WITNESS: I see the appropriate section to which reference is made, Mr. Reilly.

Q What exhibit is that, sir?

A Exhibit 9, page 4, Point C, in the middle of C, and sub-points 1 and 2 thereunder.

THE COURT: Would you repeat t hat? Is that the collateral agreement?

THE WITNESS: The collateral agreement with Blair. That is page 4, middle of the Page, C.

THE COURT: And the title there is, "Events Giving Rise to Withdrawal Rights"?

THE WITNESS: Yes.

THE COURT: And that is what you have in mind; is that right? That is what you were talking about as your "cushion"?

THE WITNESS: This relates to the concepts that we had discussed; that's right.

THE COURT: All right.

(Pause.)

Q Is there any other place that you see it, or just that one paragraph, C, on page 4?

MR. FRIED: I did not look for any other place.

THE COURT: That is the only one to which my attention has been directed, Mr. Reilly.

Q In any event, that is the one which you understood afforded you the cushion or protection that you had thought you obtained when you signed these agreements?

A That is my understanding; yes, sir.

Q And it is because of that provision that you have taken the position that liquidation of securities, that is, the sale of securities for cash, was in violation of your rights? That is, subordinated securities?

A That is one of the factors in the picture, but that was not my -- that would not be my sole contention.

Q Would it be a principal contention?

A A key factor. Yes, a key, a principal -- a principal contention; yes, sir.

Q But didn't you testify that even under your own subordination agreement, and as you understood them generally, the subordinated lender has the right to direct the sale of his subordinated securities at any time and for any reason, provided, of course, that the proceeds of such sale remain subject to the subordinated account?

MR. FRIED: Your Honor, I object to this as calling for legal conclusions and taking one clause out of a total

subordination situation.

THE COURT: No; I think the question had to do with what the witness understood to be the rights of the subordinated lender in general.

A There are two different points here, Mr. Reilly, which --

Q Excuse me for interrupting.

A Yes, sir.

Q I would like you to answer my question.

THE COURT: Would you read back the last question, please.

(Question read.)

THE COURT: I will sustain the objection to that question, Mr. Reilly, because it doesn't seem to me to deal with the issues that are raised --

THE WITNESS: I will be happy --

THE COURT: Just a minute, please, Dr. Foley.

-- by the provisions of Section C. As I understand Section C it gives right to withdrawal.

THE WITNESS: Amen.

THE COURT: Not right to sale.

THE WITNESS: That's correct, and I don't think they are the same.

THE COURT: It is for that reason, but it is also

because of the hour, that we will terminate for the day, ladies and gentlemen.

Please remember -- I hope that you did obey the instructions last night -- and I enjoin you again to follow them -- not to talk about the case at home. Perhaps you had something better to do tonight, and I hope you do it.

I will see you tomorrow morning at ten o'clock, and I hope we will start promptly at ten.

(Adjourned to May 26, 1976, at 10:00 a.m.)

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Now, in discussion, counsel believe that that may be confusing, and therefore I think it best to read to you the language of the rule itself on this point, which I have before me at this time.

I do not think there is any dispute among counsel that the normal rule is 20 to 1 or 2,000 percent. However, the rule also says:

"That rule shall apply unless a specific temporary exception is made by the Exchange in case of a particular member or member organization due to unusual circumstances,"and the rule also says that, "The Exchange may at any time or from time to time in the case of a particular member or member organization prescribe greater requirements than those prescribed herein."

The differences may be a fine point from what I said yesterday, but what I read you today is the language in the rule, and there cannot be any question about that.

J O H N P . F O L E Y , resumed the stand, having been previously sworn, testified further as follows:

CROSS EXAMINATION CONTINUED

BY MR. REILLY:

Q Mr. Foley, you testified yesterday that you

had not raised any questions concerning the March 10th letter because, to put it in your own words, "I trusted Blair & Company. I trusted the people I was dealing with."

Do you remember that?

A Yes, sir.

Q You also testified as to why you got options not only from Blair but also from the wholly owned subsidiary CMC because -- and again I will put it in your own words -- "So if we got options only with Blair they could take the assets out of Blair and put them into CMC."

Do you recall that testimony?

A Yes, sir.

Q Isn't it a fact that you weren't particularly trustful of anyone at Blair and you thought they might pull a switch like that?

A Not at all, Mr. Reilly.

Q Indeed, you went to the trouble of having a separate contract, Exhibit 11, signed, to cover the possibility that they might switch the assets on you.

THE COURT: Is that a question?

MR. REILLY: Yes, I am putting it in the form of a question.

A Would you repeat that?

Q Isn't it a fact that you went to the trouble of having a separate contract, Exhibit 11, signed, to cover the possibility that a switch might be made on you?

A May I see Exhibit 11?

THE COURT: Of course.

A No. This was not done for that purpose, Mr. Reilly. I would be happy to explain, if you so desire, why I was concerned, and I would be glad to elaborate on the meaning of my statement yesterday, if I had that opportunity.

Q You already testified, yesterday. You said so if we got options only with Blair they could take the assets out of Blair and put them into CMC?

A Yes, sir.

Q You did so testify?

A Yes, sir.

Q You had never had any relationship with anyone at Blair prior to January 1970, did you?

A Only with Mr. Vanderbilt.

Q You had met him once?

A Pardon?

Q You had met Mr. Vanderbilt once in the late fifties?

A That is correct, sir.

Q And when you met Mr. Rush, Mr. Ramsey and Mr. Richardson in January or February, they were complete strangers to you?

A That is correct.

Q You had had had any prior dealings with them whatever?

A To the best of my knowledge, that is correct, sir.

Q And these are the people in whom you placed your trust?

A Yes, sir.

Q Did you ever tell Mr. Vanderbilt, Mr. Rush or anyone else that you dealt with at Blair that they had breached the trust that you had placed in them?

A I don't recall ever having had such a discussion with them after the catastrophe, namely, the liquidation of our securities.

Q And that was when: August of 1970?

A I think that is correct, sir. That's when most of them were liquidated.

Q So you had no conversation with any of the Blair people --

MR. REILLY: I withdraw that.

Q Have you had any conversations with any of the Blair people since the liquidation of your securities in August of 1970?

A By Blair people, you mean employees of Blair?

Q I mean Mr. Richardson, Mr. Ramsey or Mr. Rush.

A Since August of 1970?

Q Yes, sir.

A I believe Mr. Richardson called me on one occasion to --

Q Do you recall the date of that? Excuse me for interrupting you.

A Yes, sir. I think it was in August, sir.

THE COURT: Of '70?

THE WITNESS: 1970.

THE COURT: You mean after the securities were liquidated?

THE WITNESS: In the process. He called me with relation to one of those securities, but with that exception I don't --and with the other possible exception of having said -- having seen or made some passing remark to them on the occasion of a pre-trial discovery proceeding, I have had no contact with any of the people that you mentioned.

Q Including Mr. Rush?

A Yes, sir.

MR. REILLY: If your Honor will permit, I would like to lay a further foundation for the admission in evidence of Defendants' Exhibit C by reading from Mr. Foley's deposition in this case.

THE COURT: Defendants' Exhibit C was the transcript that we went over yesterday, of which part was submitted? Or am I confused? Which is C?

MR. REILLY: The April 9, 1970 letter to which is annexed the financial statement.

THE COURT: I see.

MR. REILLY: And your Honor indicated it hadn't been established at that time whether the witness had received it.

THE COURT: All right.

Q Do you recall in your deposition of May 2, 1974 in this action being examined as to that document and being asked --

MR. FRIED: What page?

Q -- the following questions and giving the following answers, at page 275.

THE COURT: I think you better give the witness Exhibit C, so he cal follow the questions and the answers

referred to.

Q "Q I am talking about the discussion referred to in the letter of April 9th where Mr. Rush said" --

MR. FRIED: What page are you reading from?

MR. REILLY: 275, line 14.

Q I will start over:

"Q I am talking about the discussion referred to in the letter of April 9th where Mr. Rush says --

"A Well, I don't know. He wrote that letter.

"Q You received it?

"A Yes. I received it, but I don't know what he means by that."

At page 270, starting on line 20, to 271, line 2, were you asked these questions and did you give these answers:

To put it in context I will read an answer first:

"A I am not sure I know what time period you are referring to in your question, Mr. Reilly.

"Q The time period is on the date you received this or within a month or so thereafter.

"A I am sure I must have discussed it with people, including Mr. Feldman and including Mr. Rush, within

a month following its receipt."

Do you recall that testimony?

A I don't recall it, but I don't deny having made it, Mr. Reilly. I'm not -- I don't remember it.

Q This is in your transcript that you signed.

A I understand.

THE COURT: He says he does not deny it.

Q And finally at page 268, the bottom, the last question, to 269:

"Q When did you first see this letter and the enclosures?

"A I can't say for sure when I first saw it, but from the date of the letter I assume I must have received it a couple of days, a day or so after April 9, 1970."

Do you recall that testimony?

A No.

Q You don't deny that you gave it?

A No, sir.

MR. REILLY: Your Honor, I think the testimony of this witness now has established that he did receive it, that he discussed it with Mr. Rush within a month after its receipt --

THE COURT: I do not know if it is necessary

to go on. I do not know if Mr. Fried still opposes its admission. It seems to me the matter has been connected and the document is now in evidence.

(Defendants' Exhibit C for identification was received in evidence)

MR. FRIED: Your Honor, may I read at this time another question and answer from the same deposition --

THE COURT: Yes.

MR. FRIED: -- which still shows the state of mine and the knowledge of the witness at that time.

THE COURT: Go ahead.

MR. FRIED: Page 117.

THE COURT: I am confused. Page 275 would seem to be considerably separated from page 117 and be much later in the testimony than page 117. You may read it but I wonder if it can illuminate the situation.

Go ahead.

MR. FRIED: I will go back to 117.

"Q When for the first time did you read that particular figure?

"A I don't know when I read this figure because as I told you I don't recall when I looked at this document but I can infer that I looked at it in April of 1970 after the closing.

"Q Would it be fair to say that you read that within, say, a week after April 9th?

"The Witness: I don't know when it was received.

"Q What is your best recollection?

"A I don't have any.

"Q None at all?

"A That's right. I don't recall having received this, that is what I told you.

"Q You do recall having received it at some time or you don't recall?

"A I don't recall ever having received it.

"Q This --

"A That's right."

THE COURT: All right, the jury is entitled to know what Dr. Foley testified to on prior occasions, but I do not agree with Mr. Reilly that the testimony which he read is sufficient to connect it for purposes of allowing Exhibit C to go into evidence.

MR. REILLY: I think, your Honor -- well, all right. I will go on.

BY MR. REILLY:

Q I direct your attention to the first attachment to the document now marked Exhibit C, entitled at the top,

"Consolidated State of Income and Expenses, December 1969".

THE COURT: I assume that refers to Blair & Company?

MR. REILLY: Sir?

THE COURT: I assume that refers to Blair & Company, is that right?

MR. REILLY: Yes, your Honor.

THE COURT: Whether it does ot not, the parties agree it does.

MR. REILLY: Perhaps for the assistance of the jury, perhaps I could read the April 9th letter. It is very short.

This is a letter from James Rush of Blair addressed to Dr. John Foley at his business address, dated April 9, 1970.

"Dear Dr. Foley: Enclosed is a statement of income and expenses for the year 1969 that we previously discussed. In addition is a balance sheet as of December 31, 1969.

"Very truly yours, James J. Rush" and the two attachments appear to be entitled as described in the letter.

Q I am asking you if you will direct your attention to the first attachment, the statement of income

and expenses, and particularly the figure in the bottom column, $1,474,138, in parenthesis.

What does that mean to you?

A It means that there is a loss in that amount, Mr. Reilly.

Q For the month of December?

A A claimed loss.

Q Only a claimed loss.

A That's what I said. According to this figure, yes, sir.

THE COURT: When you use the word "claimed" Dr. Foley, what significance did you attach to it?

THE WITNESS: What connotation?

THE COURT: Yes.

THE WITNESS: The restriction I used, the qualification., related to the accuracy of the figure. Assuming the figure were accurate, the firm would have a loss --

THE COURT: You understood that whoever prepared that statement inte ed to convey to the reader that there was a loss of that amount?

THE WITNESS: That's right.

Q And that loss of $1,474,138 was for the month of December 1969 alone; is that right?

A That's right, sir. That would be my understanding

Q And look under the column "Current Year to Date". The last figure in that column, $8,428,885, also in parenthesis.

What does that signify to you?

A It means a cumulative loss in the amount.

Q Does that mean -- look at the heading of that column: "Current Year to Date".

Doesn't that mean to you that Blair sustained a net loss in 1969 of $8,428,485?

MR. FRIED: I object to this because the question is not what it means to him by reading the document. What it meant to him at that time, if he made any observation at that time.

THE COURT: I sustain the objection. The document means whatever it means to the jury. If you want to ask Dr. Foley what it meant to him, you may.

MR. REILLY: I am asking what it means to you.

THE COURT: To him.

Q I am sorry. What did it mean to you, Dr. Foley?

A I don't recall having concerned myself with it.

Q Did you look at the figure?

A I don't recall.

Q Do you deny that you looked at it?

A I don't deny it. There are several hundred figures on this page.

Q You don't recall having focused on any of them?

A I don't recall having received the document, as I testified.

Q And you also testified that you did receive it.

A I beg your pardon?

Q You also testified that you did receive this document.

MR. FRIED: I object to this.

THE COURT: Yes. Do not argue with the witness.

A I believe I testified that had I received it, I would have received it two or three days after the 9th, the date on which it is labeled.

Q In your discussion of this document with Mr. Rush, what did you say to him and what did he say to you?

A I don't recall ever having discussed this document with Mr. Rush.

Q Not even generally?

A That's correct, sir.

Q Do you recall discussion of figures similar

to these with Mr. Rush?

A No.

Q Did you ever acknowledge this letter?

A No, not to my knowledge. I don't recall having received it.

Q You don't recall your earlier testimony that, "I am sure I must have discussed it with people including Mr. Feldman and including Mr. Rush within a month following its receipt".

Doesn't that refresh your recollection as to a discussion with Mr. Rush?

A No, sir. If I so testified it was pure conjecture on my part, pure speculation.

Q Pure conjecture under oath?

THE COURT: Yes, Mr. Reilly.

A That is my statement.

Q If you had known on April 3, 1970, that Blair's net loss for December '69 was $1,474,000 and that its net loss for the year 1969 was slightly less than eight and a half million dollars, would you have proceeded with this subordination?

A No.

Q You would have walked away from the deal?

A That's correct, sir.

Q You also testified yesterday, I believe, that in connection with your subordination you personally delivered various securities to Blair on April 12th, Sunday, April 12th.

A That was my best recollection, yes.

Q And the balance of your securities that were subordinated, that you, yourself and the other plaintiffs, were delivered by Shields over a period of time, a number of weeks.

A That's my understanding -- that's my recollection.

Q I am asking you why after receipt of Exhibit C you didn't say to Shields, "Don't send those securities."

MR. FRIED: I object to that, your Honor. It assumes a state of facts which the witness says he didn't have knowledge of.

MR. REILLY: Your Honor, I urge that the defendant is entitled on this man's sworn testimony that he received the April 9th letter --

THE COURT: That is for the jury to decide. They may consider it in the light of his present testimony, but I do not think you can ask the question assuming that the document had been received.

Q The letter, Exhibit C, the first sentence says,

"Enclosed is a statement of income and expenses for the year 1969 that we previously discussed."

Do you recall any discussions with Mr. Rush prior to April 9, 1970, relating to the income and expenses for 1969?

A No, I don't.

Q You don't?

A Not in specific terms, no.

Q And you don't recall ever calling Mr. Rush with respect to this letter or its attachments?

A No, sir, I don't.

Q Or raising any question with him?

A I don't, Mr. Reilly.

Q You never called Mr. Rush andsaid, "Wait a minute, we never previously discussed this."

Did you ever have any conversation like that with him?

A I didn't see the letter.

MR. FRIED: Your Honor, he says he didn't see the letter.

THE COURT: Overruled, Mr. Fried.

MR. REILLY: May I have the exhibit?

Thank you.

Q Prior to your subordination of securities

with Blair, had you ever brought a lawsuit against a brokerage firm?

MR. FRIED: Your Honor, I submit this is immaterial.

MR. REILLY: Your Honor, this witness tried to pass himself off as a babe in the woods and I am trying to show the jury he's quite to the contrary.

THE COURT: Mr. Reilly, I wish you would not make such statements before the jury. If there is an objection and you wish to make a comment, do so at the side bar.

MR. REILLY: I am sorry, your Honor.

THE COURT: I instruct the jury to disregard Mr. Reilly's statement. I am not taking a position whether or not Mr. Foley was a babe in the woods, but that is for you to decide, not me.

I will allow the question.

A Yes.

Q What firm was that?

A I believe it was Reynolds & Company, to the best of my recollection.

Q Reynolds & Company?

A Yes, that's what I sayd.

Q Do you know that Reynolds & Company is a member

of the New York Stock Exchange?

A Yes, I do.

Q What was the approximate date that you filed that suit, do you recall?

A I don't remember, Mr. Reilly. I can guess. It's a pure guess.

Q Well, roughly.

A It's a pure guess. Somewhere between ten and fifteen years ago, to the best of my recollection, ten or twelve years ago.

Q 1964 to '66, in that time period?

A I don't know whether that would include it or not. Plus or minus five years.

Q Did that lawsuit relate to a dispute as to the authorization of the broker to sell shares for you?

A That's right. There were either one or two hundred shares of an electronics company in Princeton, New Jersey, which was, according to my recollection -- and this has been a long time ago, this little company had been started by some people from Princeton University.

Q Excuse me. I don't think I need the full explanation.

A I had shares in the company.

THE COURT: The question is essentially whether

it related to a dispute.

THE WITNESS: Yes, sir, I said I did.

Q Was that sale effected contrary to written or oral directions?

A Both.

Q Both?

A Yes, sir.

Q And the broker was not willing to correct the situation to your satisfaction?

A Not initially.

Q But finally he did?

A Yes.

Q And that lawsuit was listed in your response tothe New York Stock Exchange questionnaire?

A I don't recall.

Q Well, let me refer to the deposition you gave --

A It may have been and it may not have been. I don't recall. It was a minor point and never went to court.

THE COURT: Excuse me. I am confused. Suing somebody means going to court.

You mean it was never tried?

THE WITNESS: Yes, sir. There was a discovery

before trial, and that was the end of it.

THE COURT: You did not get as far as you are at the moment?

THE WITNESS: That's correct, sir. That's what I meant. I am a layman, your Honor, in this regard.

Q I would like to read from the deposition you gave in the suit against Mr. Vanderbilt and others, in which you were questioned concerning this matter at page 912.

MR. FRIED: Your Honor, unless there's some inconsistency, this reference --

THE COURT: That is correct, Mr. Fried, but you confront me constantly with the question of trying to divine beforehand whether it is consistent or not.

MR. REILLY: There are two purposes, your Honor. That one and one which I am hesitant to explain --

THE COURT: Let's proceed.

Q "Did you ever receive a monthly statement where the error related to what securities or what kind of securities the broker was holding for you?

"A The one I remember resulted in a lawsuit.

"Q Was the broker's records in error as to how many securities it was holding for you, the quantity of

securities?

"A The broker had -- the error was the following: The broker had sold shares owned by me (a) without my authorization and (b) against my written and orally expressed directions and then the broker was unwilling to make restitution. This was listed in my response to the New York -- the New York Stock Exchange questionnaire. It's in there."

Do you recall giving that testimony?

A I don't recall.

MR. FRIED: Just a minute, your Honor. There is nothing inconsistent with what the witness stated a moment ago.

THE COURT: If you want to ask him whether it refreshes his recollection about this, which he said he did not recall before --

THE WITNESS: I don't recall.

THE COURT: It does not refresh your recollection?

THE WITNESS: It doesn't, your Honor.

THE COURT: All right.

MR. REILLY: May I have Exhibit 14, please.

Do you have the original, the one that was marked by the clerk?

MR. FRIED: Yes.

MR. REILLY: Thank you.

Q You don't recall giving this testimony in the Foley v. Vanderbilt action?

THE COURT: He said that that testimony did not refresh his recollection.

Q I am now asking you, Dr. Foley, do you now recall giving the testimony that I just read.

A You mean about the electronics company in Princeton?

Q About the broker and the error and the lawsuit.

A I have a very vague recollection of having been questioned about it, but I certainly don't remember the specifics of what I so testified at that time.

Q But you don't deny that this is a transcription --

A No, I think what you read to me is accurate in terms of what I have just told you, Mr. Reilly. It's not the full story, but what you read is accurate.

Q All right. Then if it is accurate as to what I read to you, will you please show me on Exhibit 14, the New York Stock Exchange questionnaire, where you described this lawsuit.

THE COURT: I do not understand, Mr. Reilly, that Dr. Foley --

THE WITNESS: I didn't say it was in here.

I didn't recall whether it was in here or not.

THE COURT: You do not need to look for it, Dr. Foley.

MR. REILLY: Your Honor, I misunderstood. I thought the witness had said that his testimony was accurate.

THE COURT: Look, Mr. Reilly: He said he does not remember today whether he put it in or not. He said that testimony is accurate, but it does not refresh his recollection whether he put it in, is that correct?

THE WITNESS: Yes, your Honor.

THE COURT: So there is no point in hunting for it. He says he does not remember putting it in, and the jury has heard the whole story.

Q I direct your attention to Question 19-B in Exhibit 14.

"Are you now or have you ever been involved as a party before any Court, arbitration tribunal, administrative agency or other regulatory body?"

And the answer says, "See Item 15."

You have a rider annexed to the last sheet as to Items 15 and 19-B, which reads -- or it refers generally to a suit you brought against your former employer, Psychological Corporation.

Do you see that?

A I see that, yes, sir.

Q Will you tell me why you didn't disclose on this application the lawsuit you had also brought against Reynolds & Company, a member firm of the New York Stock Exchange?

A No, I can tell you why that was. Mr. Feldman, my attorney at that time, prepared this, Mr. Reilly, from information I supplied to him, and this i his --

Q Was there any reason for not supplying Mr. Feldman with that information?

A I don't recall that we discussed it or not.

Q Isn't it a fact that if you disclosed that you had brought a suit against a member of the New York Stock Exchange you would not have been approved as a subordinated lender?

A That would have been a blessing.

Q Whether it would have been a blessing or not, will you answer the question?

A What is the question.

(Question read)

A I don't know the answer to that question. He is asking for something beyond my ken, your Honor.

THE COURT: All right. That is the answer.

Q Did you read that Exhibit before you signed it?

A You mean this document that I have in my hand?

Q Yes, Exhibit 14.

A I am sure I did, Mr. Reilly.

Q This isn't something that you regarded as just a perfunctory, sign-it-and-send it-in document, is it?

A I have no knowledge of the function of this document in the eyes of the New York Stock Exchange or the eyes of the law.

Q But I am asking about the status of this document in the eyes of the plaintiff.

A I was told that I should fill out this document, give it to my attorney, and he would -- he actually filled it our for me -- and that he would submit it. And where he got it I don't know. It was given to him by somebody. It wasn't given directly to me by the New York Stock Exchange, to the best of my recollection.

Q Did you read the sentence that is in capital letters on the sixth page that states, "I recognize that the statements herein and in every supplementary sheet attached hereto will be verified by investigation and

hereby declare that they are true, complete and accurate."

Did you read that?

A I don't recall whether I read it or not, Mr. Reilly.

MR. REILLY: If your Honor please, I would like to read a few questions and answers from page 205 of this witness' deposition in this case, starting at line 8 and going through line 16.

This was a deposition given on April 9, 1973.

MR. FRIED: Just a moment. Let me get that, please.

MR. REILLY: I am sorry.

(Pause)

MR. REILLY: Page 205, lines 8 to 16.

Do you have it?

MR. FRIED: Yes.

MR. REILLY: "Q Are you familiar with the statements of the Accounting Principles Board?

"A No.

"Q Any of them?

"A I don't know what you mean by that. I'm not familiar with the term.

"Q You never heard of the Accounting Principles Board?

"A Not that I recall, no, sir."

Q Do you remember that testimony?

A I don't recall the testimony, but I don't deny it, Mr. Reilly. But it was a true statement.

Q I show you Exhibit F for identification and ask if that is a copy of an affidavit that you executed on March 19, 1973.

THE COURT: Has that been marked for identification?

MR. REILLY: It has been marked.

THE COURT: What is the letter?

MR. REILLY: F as in Foley.

THE COURT: Foley Square or -- do you want to read the whole affidavit or a portion of it?

MR. REILLY: I just want to make certain that he signed it.

A This is my signature, on the 13th of March, 1973.

MR. REILLY: Your Honor, Exhibit G for identification is an abbreviated version of the Exhibit F. I have copies for other counsel.

THE COURT: What is the purpose of abbreviating it?

MR. REILLY: I want to offer in evidence the portion that is contained in the abbreviated version.

MR. FRIED: I object to this. Either the whole affidavit is going to be offered or not at all.

THE COURT: Can I see the whole affidavit so I can understand, try to understand.

MR. FRIED: To take something out of context does not present the thing in a proper light.

MR. REILLY: I would have no objection, your Honor, if what I have in the abbreviated version is out of context.

And if Mr. Fried wants to add to put it in a fair context, I have no objection whatever.

I don't know of anything in here that is relevant to that context. That's why I left it as it was.

THE COURT: Let me see the exhibit itself, I mean Exhibit F.

(Pause)

THE COURT: I will allow the admission of Exhibit G. And if Mr. Fried, on behalf of Dr. Foley, wishes to put anything more from the affidavit of March 19, 1973 into evidence, of course I will be glad to consider that.

Exhibit G is received in evidence.

(Defendants' Exhibit G for identification was received in evidence)

THE COURT: You will notice that Defendants' Exhibit G consists of just a few paragraphs from Exhibit F. I have examined them and I believe that Exhibit G deals with the subject on which Mr. Reilly has been questioning Dr. Foley. That does not mean that what appears in Exhibit F may not be significant for some other purpose some other time.

MR. REILLY: Your Honor, may I read to the jury just a little bit of this Paragraph 35?

THE COURT: Yes, you may.

(Mr. Reilly read to the jury from Defendants' Exhibit G in evidence)

MR. FRIED: I submit this is wholly unfair, your Honor. This is an affidavit referring to a number of documents and information and investigation made at that time.

THE COURT: I think you will be able to bring that out on redirect, if that is the explanation.

MR. FRIED: All right. Thank you.

MR. REILLY: And I also think the jury should be informed, your Honor, that the testimony I quoted as to his familiarity or lack of it, with accounting principle statements, was given on April 9, 1973, three weeks after he signed this affidavit.

MR. FRIED: I submit, your Honor, this is argumentation.

THE COURT: Let's not have argument at this stage of the game, Mr. Reilly.

MR. REILLY: All right.

THE WITNESS: Your Honor, may I have a blank piece of paper?

THE COURT: Certainly.

THE WITNESS: Thank you.

MR. REILLY: Your Honor, may I see what the witness has just written?

THE COURT: No, I don't think so.

THE WITNESS: I will be happy to let him look at it. I have no objection, your Honor.

THE COURT: That is up to you.

THE WITNESS: If my counsel doesn't object.

MR. REILLY: May I have Exhibit 13?

THE WITNESS: I have no objection.

THE COURT: That is all right.

THE WITNESS: As long as the jury hears what's on. That would be my one qualification.

BY MR. REILLY:

Q I hand you Exhibit 13.

THE COURT: Exhibit 13 is a letter of April 3rd.

MR. REILLY: Yes, your Honor. It is the letter of April 3rd to the New York Stock Exchange which Mr. Foley signed on that date.

Q (Continuing) I would like to ask you some questions about the first paragraph. To put it in context, I will read the first sentence, which reads:

"Accepting the suggestion of the New York Stock Exchange, I have conducted such investigation of Blair & Co., Inc., and of its participants as I consider desirable, appropriate and necessary under the circumstances."

And then it says: "Further, I have been furnished with all the financial information with respect to Blair & Co., Inc. as I have requested, including the latest certified audit by Arthur Young & Company dated

December 5, 1969 and a recent computation of net capital prepared by Blair & Co., Inc. as of February 28, 1970, which indicates that as of that date Blair & Co., Inc. was in violation of Rule 325 of the Board of Governors of the New York Stock Exchange."

Now, directing your attention specifically to the second sentence, the portion of it that says, "I have been furnished with all the financial information as I have requested."

Did you ever request any financial information from Blair?

A I don't recall asking for specific things, Mr. --

Q Even general things?

A Well, I think in my discussions with Mr. Rush, and these were the major ones that dealt with this particular topic, I asked him how the firm was doing, how it was making out and what the prospects were, in his opinion.

Q My question is, did you --

A I did not ask him for specific financial documents. I did not ask him for specific financial documents.

Q Did you ask him for specific or even general

financial information?

A I think I've testified to that.

Q You mean your earlier answer you feel is responsive to that?

A Yes, sir.

Q All right.

It continues, after the word "requested, including the Arthur Young audit of December 5, 1969."

Is that the document which has been received in evidence as Exhibit 2?

A I don't know. I would have to look at it and see if that's it.

Q Yes.

(Handing)

A That's it, yes, sir.

Q And continuing in the same sentence "... and a recent computation of net capital prepared by Blair & Co., Inc. as of February 28, 1970."

Were you furnished with that?

A I don't recall having been furnished with that. But I just frankly do not remember.

Q You don't remember one way or another?

A That's right.

Q Do you have any recollection of being given

any piece of paper that had computation of net capital, one sheet, two sheets, whatever?

A I recall only that at some point in time, it may have been in connection with the discovery proceedings in one or another of the actions, I was shown a piece of paper that I think had some capital figures on it.

But when I saw that, I haven't the slightest idea.

Q I show you Defendants' Exhibit H for identification and ask if this is the document to which you have just referred. I'm sorry it is not a clear copy.

A I believe this is it, Mr. Reilly. To the best of my recollection this looks like it.

Q You can't recall one way or another?

A To the best of my recollection, I got this at some later time. But when I got it, I haven't the slightest idea.

THE COURT: Later than what, Dr. Foley?

THE WITNESS: Well, certainly, in all probability, later than the closing.

THE COURT: What did you mean when you said "later"?

THE WITNESS: That's what I meant, the closing,

April 3, 1970.

THE COURT: May I see the exhibit, please?

THE WITNESS: May I add one comment, your Honor?

THE COURT: Yes.

THE WITNESS: My best recollection was that it may have been given to me for the first time, shown to me for the first time, when I was being questioned by one of the attorneys for a defendant.

MR. REILLY: May I proceed, your Honor.

THE COURT: Yes, sir.

BY MR. REILLY:

Q Looking at this exhibit doesn't refresh your recollection as to your having received it at any time prior to the closing?

A No, it does not. Looking at it now does not refresh my recollection, Mr. Reilly.

Q Do you deny that you received it prior to April 3rd, on or prior to April 3rd?

A I say my best --

Q I'm asking, do you deny?

MR. FRIED: I object to this, your Honor.

THE COURT: I suppose the question Mr. Reilly is asking is, are you certain that you did not?

THE WITNESS: I would say 95 percent certain, togive you the best estimate of my state of mind.

Q This may be repetitious. Bear with me if it is.

Did you receive any recent computation of net capital prepared by Blair as of February 28, 1970, at the time you signed the April 3rd letter?

A Not that I recall. Not that I recall.

Q You don't recall at all?

A That is my testimony, sir.

Q You do recall you represented to the Stock Exchange in that letter that you had received such a computation. Do you recall that?

MR. FRIED: Objection.

THE COURT: Overruled, Mr. Fried.

A I signed the letter, but I did not write the letter, Mr. Reilly.

Q I realize that.

A And I had not seen the letter prior to that afternoon, late that afternoon, and I was told that it was a perfunctory letter, to be signed by -- a letter similar to the type that was signed by other characteristic, typical subordinated lenders.

Q Whether perfunctory or not, didn't you believe

it had to be accurate and truthful?

A I had no such opinion.

Q You had no such opinion?

A That's correct, sir.

Q You mean because something is perfunctory it doesn't have to be truthful? Is that your view?

A I didn't say that, Mr. Reilly.

MR. FRIED: I object. It is argumentative.

THE COURT: Overruled.

What did you mean by your statement, Dr. Foley?

THE WITNESS: What was my statement? Which statement?

THE COURT: Will you read back those two or three questions and answers, please?

(Record read)

THE COURT: That is the statement I mean.

What did you mean when you said you had no such opinion as to whether it had to be truthful?

THE WITNESS: I didn't concern myself with it beyond the point --

Q You didn't concern yourself with the truth?

MR. FRIED: Just a minute. Let him answer.

A (Continuing) -- beyond the point of believing

what I had been told, namely that this was a type of document which the typical subordinated lender wasasked to sign, and the letter was given to me, I think by Mr. Richardson, as we sat at the table, fairly late in the afternoon, I would guess maybe five o'clock, 5:15.

I had never seen it before, nor had my attorney, to the best of my knowledge. I signed it. I didn't say to myself, "Well, how accurate is this?" I didn't ask myself legal questions about it.

Q Do you call that a legal question, "How accurate is this?"?

MR. FRIED: I object to this, this constant argumentation.

THE COURT: Sustained.

Q I ask if you could refer to the figure in parenthesis in the far right-hand column at the bottom of Defendants' Exhibit H. It is on the line that is entitled "Excess Capital."

I ask whether that refreshes your recollection as to any discussions you had with Mr. Rush in February or March or even April as to that figure.

A No, it does not refresh my recollection, Mr. Peilly.

Q You did understand, did you not, that Blair

was in violation of the Exchange's net capital rule?

A It was my understanding that --

Q Did you --

THE COURT: As of what date?

A As of what date?

Q On or prior to April 3rd.

A Yes.

Q Did you understand the dimension of the violation?

A No, sir, I did not.

Q Well, I believe you have indicated --

A Excuse me, Mr. Reilly. Let me qualify my answer. I'm sorry.

I understood the dimensions of their violation of the rule only to this extent: that it was my understanding, as I had been told, that with the deposit of our securities they would come into compliance, and I think that is relevant to the question you have asked me.

Q Yes.

Did that refresh your recollection as to anything, any discussion that you had with Mr. Rush that the capital deficiency was in the range of 2.8 million, 3 million anything like that?

A No, it does not, sir.

Q Did you understand that it was in that range?

A I had no such understanding. I had no knowledge as to how large the deficit was.

Q Wouldn't it be fair to say, Mr. Foley, that you certainly didn't understand that it was only $100,000 and that 2.7 million of securities would put them in compliance? Is that right?

A I think it would be fair to say that my understanding was that the deficit was somewhere in that range, yes, I think --

THE COURT: Somewhere in the range of the capital that you were going to put in?

THE WITNESS: Somewhere between $1 and the capital that we were depositing, that's right, sir.

THE COURT: But not more?

Q Somewhere between $1 and $2.7 million?

A Whatever the value of the securities was that we were depositing, that's right. That would be an inference, Mr. Reilly, but that would be a correct inference.

MR. REILLY: If your Honor please, I wanted to request that Exhibit H for identification be admitted in evidence on the same basis as the March 10th letter. I am hesitant to say any more about the point.

THE COURT: You mean on the same basis in

the sense that the testimony already has connected it or will?

MR. REILLY: On the same basis as the testimony given by Mr. Feldman in the 21A proceeding, on which --

THE COURT: I am afraid I do not understand the allocution. At the recess you can explain it to me. Indeed, I think it is probably a good time to take the morning recess now, and we will.

The jury is excused at this time and I will hear counsel on whatever his point is.

(Jury left the courtroom)

THE COURT: Mr. Reilly, I am afraid I do not understand the point you are trying to make.

MR. REILLY: The point I was trying to make, your Honor, is that the representations made by Mr. Feldman when he produced the documents --

THE COURT: You mean one of those documents that was referred to in the transcript of an earlier deposition?

MR. REILLY: This was the 21A transcript in which --

THE COURT: Yes.

MR. REILLY: I don't have the page numbers handy. I had them yesterday. But Mr. Feldman said, "The

* * *

(In open court - jury present)

THE COURT: I have the exhibit here.

MR. REILLY: Your Honor, I offer Exhibit H for identification in evidence in connection with reading the following question and answer from the deposition of Mr. Foley in the 21-A bankruptcy proceeding given on November 3rd, 1971.

THE COURT: That is in reference to the same exhibit, I take it?

MR. REILLY: It is a question concerning this identical document or a photocopy of it.

"Q When was it furnished to you, sir?

"A I don't know. My guess would be it must have been furnished sometime in March, because it would have to have been after the 28th of February and prior to the 3rd of April."

THE COURT: All right. It is received in evidence pursuant to the ruling I have made.

(Defendants' Exhibit H for identification was received in evidence)

MR. REILLY: Your Honor, my able colleague has reminded me I had additional grounds for the offer which were explained to the Court during the recess.

THE COURT: All right.

Q I hand you Exhibit H again, Mr. Foley, and I ask you whether the testimony that I just read that you gave in 1971 refreshes your recollection at all as to your receipt of that document prior to April 3rd.

A No, it doesn't, Mr. Reilly.

Q It doesn't refresh your recollection?

A That's correct, it doesn't.

Q Your recollection was certainly better in 1971 than it is in 1976.

A Not necessarily.

Q No?

A It might even be better today.

Q And better yet five years from now?

A No -- well, that's conceivable if we are able to discover more about the fraud that has been perpetrated.

MR. REILLY: Your Honor, I move to strike the last response.

THE COURT: I will have to overrule you, Mr. Reilly. I think you asked for the answer.

MR. REILLY: The witness had identified yesterday Exhibit E for identification as bearing his signature, an affidavit of November 6, 1970.

I offer in evidence a portion of that affidavit, and if there is anything which renders this out of context

I certainly would have no objection --

MR. FRIED: Your Honor, I must rise and object to Mr. Reilly's constant statements --

THE COURT: I do not think as a matter of practice I would like to have you put in excerpts from documents. I think you should put in the document and read to the jury whatever you want to the jury. I do not get a good picture of things if you put in excerpt after excerpt.

Q I would like to read to you, Mr. Foley --

THE COURT: First of all, has the exhibit been admitted in evidence?

MR. REILLY: No, your Honor.

THE COURT: Well, you are offering Mr. Foley a preview of the deposition on the exhibit --

MR. FRIED: Your Honor, I have a two-fold objection.

One, there is no foundation laid --

THE COURT: What exhibit is this, Mr. Reilly?

MR. REILLY: Exhibit E for identification. I believe the witness identified this as an affidavit he signed on November 3, 1970. That was yesterday. It is some twenty pages long, covers a range of material, and I wanted to offer one limited portion of that in evidence.

THE COURT: I understand that, but I am trying to get the testimony as to authentication, and I do not recall his saying he had signed that document.

MR. FRIED: My objection is that all these documents and other matters are irrelevant unless they are used for the purpose of showing a prior inconsistent statement and there is no foundation laid by merely offering these documents in evidence.

THE COURT: Well, it is to see if it should be brought to the jury's attention, and if I can be furnished with a copy of it, I can rule on whether it should be brought to their attention.

MR. FRIED: I object to Mr. Reilly's statements before offering these exhibits as to their purpose and descriptions.

THE COURT: Well, he is entitled to see it is an affidavit signed by the witness.

MR. FRIED: I am not picking on that, your Honor. Proper identification is one thing, but a description is something else.

THE COURT: I will have to rule on this hereafter, Mr. Reilly, because I am not quite sure -- I will have to rule on it hereafter. I will reserve decision and speak to you all about it.

Q Do you recall the amount of the secured note that you signed on April 3, 1970?

A No, I don't. Not the exact amount, Mr. Reilly.

MR. REILLY: May I have Plaintiffs' Exhibit 9, please?

Q I show you Plaintiffs' Exhibit 9, and more particularly the document included in that exhibit, which is entitled "Secured Note", dated April 3, 1970, which I understood from your testimony bears your signature.

Is that your signature at the bottom?

A Yes, sir.

Q Does that refresh your recollection as to the amount of the secured note?

A I can read the number, if you would like for me to --

THE COURT: The question is whether it refreshes your recollection, not whether you can read it.

THE WITNESS: No, it doesn't refresh my recollection.

A I have no recollection, and this doesn't refresh it.

Q You have no recollection of the amount of the secured note that you signed?

A That's what I said, Mr. Reilly.

Q Or even the approximate amount?

MR. FRIED: That's another question, your Honor.

THE COURT: That is another question: Do you have a recollection of the approximate amount?

A It was my recollection that the value of the securities deposited was somewhere between two and three million dollars, Mr. Reilly, and that it is also my recollection that the computations relating to the value of those securities were made by someone at Blair. I didn't make them. Mr. Luce might have made them and he was not then an employee of Blair, or he might have made them possible in conjunction with Mr. Rush, but I assure you I didn't make them.

MR. REILLY: Excuse me.

Your Honor, I think he's gone far afield from my question.

THE COURT: Go ahead, Mr. Reilly, what is your question?

Q Mr. Foley, the amount that appears in this secured note is $3,734,349.

Do you see that figure?

A I read 784.

THE COURT: So do I.

A (Continuing) I read 3,784,349.

Q How was that figure arrived at?

A I don't know.

Q Did you participate in any discussions to the amount of the note you were going to sign as evidenced by this document?

A No, not that I recall. It is conceivable Mr. Feldman might have on my behalf, but I didn't personally.

That's correct, sir.

Q Well, did Mr. Feldman discuss with you the amount of the note that you were going to sign and how the figure was arrived at?

A Not that I recall.

Q That 3,784,349 refresh your recollection at all as to the amount of Blair's capital deficiency on April 3rd?

A No, this figure doesn't tell me at all anything about Blair's capital deficiency.

Q Did you discuss with Mrs. Foley or Mrs. Salisbury your signing of this note in this amount?

A I don't recall discussing that note with either of those parties. Mrs. Salisbury was present at

the closing.

Q Do you recall discussing with either of them the amount of the note you were going to sign?

A No. I don't. I don't, Mr. Reilly, no, sir.

Q I will return this to you and ask another question.

Do you know whether this note includes the Amicon stock?

A I don't know. It might. It's conceivable that it might.

Q Do you want to look at it?

A If it does, what value they attributed to it I don't know. I didn't participate in the computation of this figure in any way, shape or form.

Q Do I understand correctly that you signed this note on April 3rd?

A I said that was my signature.

Q And you signed it on April 3rd?

A That's my recollection, yes.

Q Was this one of the papers handed to you at the closing that you were asked to sign --

A This is one of the papers I signed, yes, sir.

Q Did you discuss the particular resson for this figure with your counsel, who was with you at the closing?

A Not that I recall.

Q Did anyone tell you that this is another perfunctory document that you were being asked to sign?

A No, I don't recall that term having been applied to this document.

MR. REILLY: May I have Exhibit 10, please.

Q I show you Exhibit 10, entitled "Blair Option Agreement" and you refer specifically to paragraph 10, although you are free to read or consult any portion of that document. I am only going to ask you about paragraph 10.

THE COURT: Paragraph 10 of that agreement? What page is it on, Mr. Foley?

MR. REILLY: Page 10, page 10, your Honor.

THE COURT: Thank you.

A I have read it, Mr. Reilly.

Q This is the paragraph that Mr. Fried read to the jury yesterday and which you acknowledged to be the warranty that you had reference to?

A Yes. In our discussions. That is right, sir.

Q This paragraph, at least the first portion of it, which is all I think is necessary to read at the moment states:

"In order to induce optionee to make the loan and to comply with the terms thereof, Blair hereby warrants and represents to optionee" -- that's you -- "that, *except as Blair has otherwise advised optionee), Blair has no knowledge that it is under investigation with respect to any material violation" ... or in violation of any rule of the New York Stock Exchange" -- and so forth.

Do you see that?

A I see it, yes, sir.

Q Why was the parenthetical expression "except as Blair has otherwise advised optionee" put in there?

A Well, I have two answers to your question. They aren't different. They are both responsive, I believe, Mr. Reilly.

Q All right.

Let's take the first one.

A The first one that I didn't write this. I didn't write this. This was prepared by one or more lawyers -- attorneys, and therefore, I'm not an expert in respect to the meaning of a particular section of the paragraph.

However, as a layman, to me that parenthetical expression "except as Blair has otherwise advised optionee", to me, as a layman, that had at the time the following

meaning. I had been told by Mr. Rush, as I have testified, that Blair was at the moment, that is, shortly prior to our closing -- wasn't in compliance with the capital rule of the New York Stock Exchange but that when our securities were deposited they would be in full compliance, and that is the reason why this says "except as Blair has otherwise advised optionee".

That was my understanding of the meaning of that parenthetical expression.

Q Why didn't you request that this specifically state that upoj receipt of your subordinated securities Blair "Will be and warrants that it will be in compliance with the capital rules of the New York Stock Exchange"?

A Because --

MR. FRIED: Just a minute. I object to this, your Honor, as pure argument.

THE COURT: Overruled.

A Because I am not an attorney, and I was not preparing the document itself, the writing, Mr. Reilly.

Q Don't you recognize, though, even as a layman, that this opens the door for Blair to state at any time in the future that "We advised you as to A, B, C, D or whatever?

A I trusted the people at Blair, Mr. Reilly, and

at that point in time I had no reason not to trust them. And I also trusted the people at the Stock Exchange and at that time I had no reason not to trust them.

Q If you trusted them then why did you need any warranty at all?

MR. FRIED: Your Honor, I submit that this is argument.

THE COURT: Sustained.

MR. REILLY: May I have Exhibit 9 back, please?

MR. TURETSKY: Certainly.

Q At the conclusion of your testimony yesterday, Mr. Foley, I was asking you some questions about the protective provision which you characterized as a cushion, and you had before you then Exhibit 0 and were referring to paragraph C on page 4.

Do you recall that?

A Yes, I do.

Q And I hand that back to you now.

THE COURT: What document is that?

MR. REILLY: Exhibit 9, your Honor.

THE COURT: What is the name of it?

THE WITNESS: Collateral agreement.

THE COURT: Dated April 9th?

MR. REILLY: Dated April 9th and signed

that day.

THE COURT: All right. Thank you.

Q I believe you also indicated yesterday that it was because of that provision, at least in part, that you believe the liquidation of securities, the sale of your subordinated securities for cash was in violation of your rights.

Do you recall that testimony?

A No, I don't. I recall the occasion, but it was just at the adjournment? And his Honor was making a clarification which I attempted to make, but he beat me to the punch.

The clarification as I recall related to the differences between a sale and a withdrawal, and that was the point I was trying to make, and I think your question wasn't clear to me in that regard -- to me, at least.

Q I understand. At this point I an only asking you about the sale of securities that had been subordinated.

A Leaving the money in the account?

Q Yes.

A Yes. It was my understanding that that could be done in any kind of subordinated agreement and this particular item here, Item C, doesn't bear on that particular issue.

THE COURT: It is not a question of whether Item C bears on that issue.

THE WITNESS: Yes.

THE COURT: You say it was your understanding that any securities that had been loaned and subordinated could be sold by whom?

THE WITNESS: By the owner. Not the firm with which they were subordinated but by the legal owner.

THE COURT: Which in this case was you?

THE WITNESS: Yes, and members of my group.

Q And in the case of other subordinated lenders, it would have been the other subordinated lenders?

A That's right. They would have made the decision as to whether they wanted to sell the subordinated securities. That was my understanding.

Q Whether they were insiders or outsiders?

A I said any subordinated lenders. I didn't know the differences between inside and outside, Mr. Reilly.

Q When for the first time did you learn that very substantial amounts of subordinated securities had been converted to cash?

A After we commenced the litigation.

THE COURT: Whose securities are you referring to?

THE WITNESS: He is referring to insider securities.

MR. REILLY: I am referring to securities that were subordinated to Blair by anyone.

Q When for the first time di you learn that substantial amounts of those subordinated securities had been sold and converted to cash? I think you said at the commencement of some litigation.

A I thought you meant -- would you repeat the question? Let me make sure I get the question.

Q When for the first time did you learn that substantial amounts of subordinated securities held by Blair had been converted to cash, that is, sold and the cash proceeds held?

A To the best of my recollection it would have been, it would have been in August of 1970 -- sometime in August 1970.

Q I show you this letter dated August 5, 1970, consisting of three sheets and a fourth sheet, which appears to be a photocopy of an envelope, marked Defendants' Exhibit J for identification, and ask you whether you received that on or about that date.

A Yes, I did. I received it in let's say two or three days or whenever was later than that.

THE COURT: This was addressed to you?

THE WITNESS: That's right.

THE COURT: From whom?

THE WITNESS: From Mr. Ramsey, president of Blair.

Would you like me to read the letter, because I haven't read it in many, many years?

MR. REILLY: Well, feel free to do it.

THE WITNESS: Are you going to question me about the content? Otherwise I will return it to you.

MR. REILLY: Yes. I am going to ask you a question about it and I think perhaps you should read it.

THE WITNESS: Okay.

(Pause)

THE COURT: Does anybody have an extra copy of this exhibit for me?

MR. REILLY: I am sorry, your Honor. This is one I didn't have a chance to duplicate.

MR. BROOKS: I have a copy.

THE COURT: Thank you.

(Pause)

end t4

Q Mr. Foley, I am only going to ask you what you did after the receipt of that letter. So I don't know if you need to read it with that care.

A I'm clear. What is the question, sir?

Q What did you do after receipt of that letter?

A I called my attorney. We conferred and I gave him, transmitted to him the document.

Q This document?

A A copy of it. The original of this document. This is a copy.

Q May I see it, please?

A Yes, sir.

(Handing)

Q Did you give him anything else at that time?

A Not to my best recollection,no.

Q Your attorney was Mr. Feldman?

A At the time, yes, sir.

MR. REILLY: I offer this in evidence, your Honor.

MR. FRIED: No objection.

THE COURT: Very good. Received.

(Defendants' Exhibit J for identification was received in evidence)

Q Did you give your counsel any instruction with

respect to this letter?

A Not that I recall, Mr. Reilly.

Q Did your counsel give you any advice with respect to that letter?

A Subsequently he did, on a later occasion, yes, sir.

Q How much later?

A Sometime later, during the same month, days later.

Q And what was that? What was that advice?

MR. FRIED: Just a moment, your Honor.

MR. REILLY: I thought that had been waived a long time ago, but perhaps not.

THE COURT: I do not understand with regard to this particular item. Are you objecting to this particular item?

MR. FRIED: It is the client's privilege, your Honor, and I can't waive it for him.

THE COURT: You are aware, Dr. Foley, that perhaps, subject to your having opened up the question on previous discussion, there is at least generally the right on the part of a client to refuse to answer about discussions had with his attorney.

THE WITNESS: I understand. I have nothing

to hide in this particular regard.

THE COURT: I am not suggesting that you do. From here on I will leave it to you to decide whether you wish to assert that privilege.

MR. REILLY: I can frame a question, your Honor.

THE COURT: I do not think we have a problem, frankly.

MR. FRIED: May we have the question again.

Q Did you, within a matter of a week or two after this August 5th letter, commence a proceeding to recover your subordinated securities?

THE COURT: You can go ahead and answer.

A Yes.

THE COURT: Mr. Reilly, I believe that if I had not read the letter I would not know what the purport of all those questions and answers is, and the jury does not know what is in this letter.

I think it would be a good idea if you advised them. It is in evidence now. That is, read, or agree with Mr. Fried as to how to describe, the letter.

MR. REILLY: I would like to read just one paragraph. I don't want to read the entire thing.

THE COURT: I would hope not.

MR. REILLY: There is a paragraph on page 2, the second full paragraph, that reads --

THE COURT: This is a letter, ladies and gentlemen, from Blair to Dr. Foley.

MR. REILLY: It reads: "In April 1970, over $11 million of collateral for secured demand notes was converted into cash, thereby providing additional working capital and also increasing by more than $3 million the technical capital of the firm under Rule 325 of the New York Stock Exchange. It was hoped that such conversion, together with about $2.800,000 of collateral for newly contributed secured notes obtained in early April 1970, would provide the firm with ample capital to see it through the difficult period and permit the organization to be kept intact and in position to take advantage of any upturn in business. Unfortunately, the upturn did not occur and our capital drain continued."

THE WITNESS: And the date, again, on that letter, Mr. Reilly, was August what?

Q August 5, 1970.

A Thank you, sir.

Q I understand you thereafter commenced a suit with respect to your subordinated securities?

A Yes. I asked my attorney what my rights were, what recourse we had. And he on my behalf commenced the suit.

Q And that suit was then transferred to arbitration?

A If you use the term in quotation marks.

Q Why in quotation marks?

A Because the so-called arbitration was before a group of three persons appointed by the New York Stock Exchange.

THE COURT: Well, all right. Let's not go into the question of your view of the arbitration. There was an arbitration proceeding which dealt --

THE WITNESS: It was called that, your Honor.

THE COURT: Under the law of New York it is an arbitration.

THE WITNESS: Okay.

Q Is it an arbitration under the rules of the New York Stock Exchange?

A Yes.

Q And you felt that the panel was biased? Is that your view?

A Is it my view that the panel was biased? Yes, sir.

Q Sir?

A It is my view. It was and is my view that the panel was biased, yes, sir.

Q Do you know who the members of that panel were?

A I know -- I do not know them personally. I did not know any of them.

Q Did you know the chairman of the panel was Professor Crowley from Fordham Law School?

A I know. Very artfully selected.

Q And your wife is also on the faculty of Fordham University?

A Correct. Correct.

Q Do you know that another member of the panel --

A This shows that --

Q Excuse me?

THE COURT: Gentlemen. Let's not argue.

A -- the extent of the fraud is amazing.

THE COURT: The jury will disregard what Dr. Foley just said. It is not for him to decide these matters. It is for the jury.

THE WITNESS: May I have the last question, your Honor?

THE COURT: I do not know if there is one

pending. Let's wipe the slate clean and go ahead, Mr. Reilly.

Q Isn't it a fact that the panel, the arbitration panel, decided against you on that arbitration proceeding?

A I was so informed.

THE COURT: I think the jury should be advised what the issue is so that they can understand it intelligently

MR. FRIED: It had nothing to do with this case, your Honor.

THE COURT: No. I will instruct the jury that there is a serious question, in my mind anyway, as to what the relevance of these other litigations are to this case. But you will be able to decide that.

However, you should know what it is about.

As I understand it, and correct me, counsel, if I am incorrect, the issue before the arbitrators, as it had been in the State Court, was whether or not the Exchange had the right to liquidate the securities which had been subordinated by Dr. Foley.

Is that correct?

MR. REILLY: Whether the Exchange?

THE COURT: Whether Blair did. I am sorry.

MR. REILLY: I have exhibits for identification marked K through, I believe, P, in connection with this

arbitration matter, but I think we should discuss it.

THE COURT: I believe so. If you are proposing to offer them in evidence, we should discuss them, yes.

BY MR. REILLY:

Q You testified on direct examination -- generally on pages 150 and 151 -- concerning the discussions you had with Hayden Stone and a contemplated or possible subordination of securities with that firm.

Do you recall that?

A Yes, I do.

Q And I believe you testified that those discussions began in the spring of '69 and continued until late summer or early fall, and then you said, "I would say October at the latest."

A That is the best of my recollection, Mr. Reilly.

Q You also testified that you received a phone call from Mr. Cambere of Hayden Stone and that the best you could recall it was in August or perhaps September, in which he told you that Hayden Stone had obtained funds from some people out west and therefore they didn't need your funds. Do you recall that?

A Yes, sir.

Q Are you quite certain as to those dates?

A That is the best of my recollection, Mr. Reilly.

Q Are you sure it wasn't any earlier than August or September?

THE COURT: That is 1969, right?

THE WITNESS: '69, yes, sir.

A That is the best memory I have of it, Mr. Reilly, in terms of time.

Q It wasn't during March or April of 1970, when you were discussing the matter with Blair, was it?

A No. That I'm sure of.

Q You are sure of that.

A Yes, sir.

Q Can you tell me any more about what Mr. Cambere said to you during that telephone conversation?

A Only what I testified.

Q You can't recall anything else about it?

A No. He said the group that they had --

Q I'm not asking you to repeat what you said. I just want to know if you can add to it.

A That is all. I cannot add anything.

Q Can you recall anything in addition that you said to him during that conversation?

A No, I don't.

Q Did you have any ocnversation with Mr. Feldman concerning the Hayden Stone matter and the conclusion of it?

A In what respect, Mr. Reilly?

Q Well --

A I don't understand the question.

Q After you received this call from Mr. Cambere, did you --

A I told Mr. Feldman, because Mr. Feldman had been in --

Q He had been your counsel in that matter?

A That's right. He had been in the meetings, almost every meeting, as I recall, that we had had with Hayden Stone.

Q How many meetings were ther?e

A I can only guess, Mr. Reilly.

Q Take an estimate.

A Six or seven.

Q Six or seven?

A Maybe five. If you include one or two luncheon meetings, if you include one or two luncheon meetings, of which there were one or two, I would say there might have been as many as eight. That would be probably the outside number.

Q Did you ever reach an agreement with Hayden Stone as to the subordination with them?

A Oh, no. We never -- our discussions were very preliminary.

Q It was just a concept?

A We never got to the point, to my knowledge, of the attorneys working on drafts of any agreements whatsoever.

Q You were discussing concepts or principles or general outlines of the subordination?

A That's right. That's right.

Q Did you request of Hayden Stone, during this period of time, any financial data of that firm?

A Not that I recall.

Q You don't recall corresponding with the firm or their corresponding with you?

A I don't recall any correspondence. I think all of our discussions were face to face, in person.

MR. REILLY: I would like to show the witness Exhibit Q for identification.

Q I ask if this refreshes your recollection at all as to the time.

(Handing)

THE COURT: The time what?

MR. REILLY: The time at which Mr. Cambere called him to inform him that they were no longer interested in Mr. Foley's proposed subordination.

(Pause)

A I had never seen this before, Mr. Reilly. I have never seen this before.

THE COURT: It isn't a question of whether you have seen it. It is a question of whether, now that you have seen it, you recall it.

THE WITNESS: No, it does not. My testimony is the same. This relates to another matter, your Honor.

THE COURT: All right.

Q Could you tell me what this does relate to?

A My understanding of it, as I read it now for the first time, is that it relates to a fee that Leonard Feldman apparently received or a bill or a statement he submitted to Hayden Stone.

I can assure you I did not participate in any of those discussions.

Q Did you participate in any discussions with Mr. Feldman concerning bringing a lawsuit against Hayden Stone?

A He never mentioned it to me.

Q Never mentioned it to you at all?

A To the best of my recollection, that's right, sir.

Q Do you recall that Mr. Feldman was paid $20,000 by Hayden Stone in connection with his representation of you?

A I don't have any recollection in that regard. I never asked him what he was paid and I did not ask anyone at Hayden Stone what he was paid, to the best of my recollection. I was not -- I did not concern myself with that question.

Q Do you recall, in April, late April, 1970, executing a general release in favor of Hayden Stone --

MR. FRIED: I fail to see what relevance it has to this case. I understand counsel is entitled to some leeway, but this is going way beyond that.

A This does not relate to --

THE COURT: Just a minute, please.

For the first time I would like to see counsel at the side bar. I mean not everybody. One person from each side.

THE COURT: Ladies and gentlemen, if you should overhear our conversation, please raise your hand. The purpose of coming over here is that you will not overhear our conversation.

* * *

he was dissatisfied with Feldman's services and that --

MR. BROOKS: That's really what I wanted to show.

THE COURT: And his real gripe is not against Blair, or that the deal he got was not the deal he expected. I do not see any relevance to the fact that Feldman was paid by Hayden Stone. I think it is too remote at this stage of the game.

MR. BROOKS: Well, we will defer offering that.

THE COURT: Once you get the Hayden Stone witnesses in here, if they give a different story from Dr. Foely --

MR. BROOKS: Yes, I will.

THE COURT: All right. Let's see if we can finish up this episode.

MR. FRIED: We will have to try every one of these matters.

THE COURT: Well, you know every trial involves some sub-trials.

(In open court)

BY MR. REILLY:

Q My question, Mr. Foley is, did you in the latter part of April, 1970, execute a general release in

favor of Hayden Stone?

A I don't remember, Mr. Reilly.

Q What is your best recollection?

A I have none whatsoever.

Q You have none one way or the other?

A That's right.

Q You mean you might have --

A I didn't say that. I said I have no recollection whatsoever as to whether or not I did.

Q Do you recall discussing the question with Mr. Feldman of your signing a general release?

A I don't recall having made -- having had such discussion, no, sir.

Q Did you have any discussion with Mr. Feldman about asserting a claim against Hayden Stone?

A Not that I recall.

Q None at all?

A That's right. I don't remember any such discussion.

Q I believe you indicated that Mr. Feldman represented you throughout in connection with your January to April 3rd discussions and negotiations with Blair.

A That is correct, sir.

Q And he represented you in the arbitration

proceeding before the New York Stock Exchange?

A That's correct, sir.

Q And in various capacities has he appeared for you on your behalf in other litigation?

A Well, I don't know about that. I don't know what that means.

Q With the firm of Goldberg & Weiss?

A He came down with me on a few occasions after we instituted the suit. That's correct, sir.

Q Have you ever paid him for those legal services?

A I have not.

Q Have you ever discussed with him the question of the fee that he would be entitled to in connection with his representation of you?

MR. FRIED: I object to that, your Honor.

THE COURT: In what regard? What services are you referring to?

Q With regard to the services from January of 1970 and thereafter, so long as he represented you, in connection with Blair.

MR. FRIED: Same objection, your Honor.

THE COURT: Did you get the question?

THE WITNESS: Yes, I did.

THE COURT: Did you ever talk to him about any fee that he was to be paid for in connection with services rendered to you?

THE WITNESS: Do you want me to answer the question?

THE COURT: Unless you assert some privilege.

MR. FRIED: I have objected to it.

THE COURT: You object?

MR. FRIED: Yes, sir.

THE COURT: What is the ground of your objection?

MR. FRIED: The ground of the objection is that it is totally irrelevant, and secondly there is a privilege in regard to this matter.

THE COURT: I overrule you on the first point. I have asked Dr. Foley if he wants to assert his privilege.

I think that would be the only basis for not answering.

THE WITNESS: Well, I can only ask you a question, your Honor, if it is appropriate. I have no objection personally to answering the question, but it is conceivable that my counsel might desire that I not answer so I'm on the horns of a dilemma.

THE COURT: Let's leave it this way. We are going to be breaking for lunch soon, so the question of

whether you answer that question will be deferred until you come back from lunch.

MR. REILLY: May I have one moment, please.

(Pause)

MR. REILLY: Your Honor, in order to safe the witness -- well, in order to avoid any concern about the privilege, I should like to read from page 236 of this witness' de sition, taken on May 2, 1974.

THE COURT: Well, that --

MR. REILLY: I think the waiver --

THE COURT: That assumes that the waiver of the privilege on one occasion constitutes a waiver on another occasion.

If you are right, then we can just ask Dr. Foley to answer. If you are wrong there is no point in reading that to him. Let me check that out.

I will not make any comment now.

MR. REILLY: All right.

I have no further questions at this time, your Honor.

THE COURT: Well, although it is five minutes early, it seems to be an appropriate time to break for lunch and as a matter of fact I will discuss the question just raised by your proposal to read the testimony.

Ladies and gentlemen, we will resume at 2:00 o'clock.

(The jury left the courtroom)

(Discussion held off the record)

(Luncheon recess)

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AFTERNOON SESSION

2:00 p.m.

(Jury in box:)

JOHN P. FOLEY, JR., resumed.

MR. FRIED: Your Honor, there is no question of privilege.

THE COURT: Mr. Reilly, would you repeat the last question. Apparently the assertion of privilege --

MR. REILLY: I am sorry --

THE COURT: Could you repat the question you put to Dr. Foley just before lunch. The reporter does not have his notes with him. Mr. Fried says there will be no question of privilege.

MR. REILLY: I believe the question was whether Mr. Foley had any discussions with Mr. Feldman concerning submission of a bill for legal services rendered during the period of roughly January 1970 so long as he continued to represent him in connection with his subordination.

THE WITNESS: The answer is no, Mr. Reilly.

MR. REILLY: Your Honor, I have had marked for identification Exhibit K-1.

THE COURT: All right.

MR. REILLY: I would like to offer it in evidence with the remaining and related papers concerning the arbitra-

tion matter, on which your Honor has deferred decision.

THE COURT: The offer is noted, and I will rule on it in due course.

CROSS-EXAMINATION (Continued)

BY MR. REILLY:

Q Mr. Foley, did you at any time between January 1 and May 1, 1970 have any communication with any officer or employe of the New York Stock Exchange, with the exception of the April 3rd letter to the Exchange, Exhibit 13?

A This was from January, let's say, to May 1?

Q Yes, sir.

A To my knowledge, the answer would be no, no such communication.

Q My last question is:

Did you serve on any committees of the board of directors of either Rogers Corporation or Amicon Corporation in early 1970?

A To the best of my recollection, Amican had no committees. If they did, I do not -- I'm not aware of having been a member of any. I was on the stock option committee of Rogers Corporation at that time, according to my recollection.

Q Do you recall whether you were on the stock option committee of Amicon at that time?

A No; I do not recall. It's the best of my recollec-

tion that they did not have a stock option committee. It is conceivable they might have, but if they did, I do not recall.

Q Could I --

A If you could refresh my memory, I would like you to.

Q I will read from page 82 of your deposition of May --

THE COURT: If it is just to refresh his recollection, why don't you just show it to him?

MR. REILLY: Show it to him?

THE COURT: Yes. Show him what you are talking about and see if it refreshes his recollection.

MR. REILLY: I will be glad to.

Q You can read the whole page, but I was referring to page 82 and specifically to the answer beginning on line 14. Do you see (indicating).

A I am reading the answer. Yes, sir.

Q Does that refresh your recollection?

A Not really, Mr. Reilly. I would be happy to read it or to comment on it, if you would like me to.

Q You have been asked whether you served on any committee of the Amicon company, and your answer is, "No, they don't have committees. The board has no committees. Well, I beg your pardon. I think there is a stock option committee

-- I was on the stock option committee of Amicon."

A Let me clarify that to the best of my ability. If there was such a committee I was probably on it, because Amicon has very few outside directors. Half of their board -- there are only about five or six people on the board --

THE COURT: I don't see why we have to take up time on this, Dr. Foley.

THE WITNESS: I know I voted -- I voted on stock options, but whether I voted as a member of the committee I don't recall.

THE COURT: All right.

MR. REILLY: I have no further questions.

THE COURT: Thank you, Mr. Reilly.

MR. REILLY: Your Honor, I don't know when you contemplate ruling on the documents we have offered with respect to two items. One was the portion of an affidavit, and the other is this fairly voluminous set --

THE COURT: I thought I had ruled on the first thing. There were two situations in which you offered a portion of an affidavit. The first I admitted. The second I declined to admit the portion, but I allowed the affidavit as a whole, with your right to read whatever you wished to, to the jury.

Are we talking about the same thing?

MR. REILLY: I believe so, your Honor, but I have

apparently misunderstood.

THE COURT: I said I didn't want to endorse the practice of constantly putting in excerpts, but I said you are free to read whatever portion you wanted to, to the jury and put the whole thing in.

I thought we had handled that. If not, that is my ruling.

As far as the record on the arbitration proceedings is concerned, I am conscious I haven't ruled on that. I assume we don't have to bring anything to the attention of the jury at this moment. If we do, I will have to look at the papers in the other room and see what I think about it. Otherwise, we can wait, and I will rule later on.

MR. REILLY: That is satisfactory.

THE COURT: Mr. Fried?

MR. FRIED: I think Mr. Loflin is next.

THE COURT: Oh, I am sorry. Mr. Loflin?

MR. FRIED: He is still here.

THE COURT: You have done a good job.

BY MR. LOFLIN:

Q Dr. Foley, as you know, I am John Loflin, and I represent the American Stock Exchange, which has been referred to more often than not as the AMEX, and my questions are as attorney for the AMEX.

My first question, sir, relates to the Rogers Corporation, which I believe you said you were a director of at one time; is that correct?

A That is correct.

Q And during what period of time were you a director of Rogers Corporation?

A I don't recall the exact date at which I became a director, Mr. Loflin, but my best estimate would be that it was -- it would be '68 or '69, plus or minus a year or two.

Q And how long were you a director?

A I am still a director.

Q As of about 1969 and 1970, the period that we have been discussing in this lawsuit, in addition to being a director, were you an officer of Rogers Corporation?

A No; I have never been an employee or an officer of Rogers Corporation.

Q But you were on the board of directors in '69 and in '70?

A That is correct.

Q Is Rogers a publicly held company?

A At the present time, yes, sir.

Q Is it listed on any stock exchange?

A On the American -- on the AMEX.

Q Was it listed on the American Stock Exchange, or the

A 270

AMEX, as of 1969 and 1970?

A I believe yes.

Q Was it listed on the AMEX when you first went on the board?

A I'm not sure. I'm not sure. I think it may have been. I believe it was, but I'm not absolutely sure.

Q Would it be fair to say that at least it was listed on the AMEX prior to the time that we have been discussing primarily in this lawsuit, that is, 1969 and 1970?

A To the best of my knowledge, yes, sir. To the best of my knowledge.

Q On direct, I believe you testified -- correct me if I am wrong -- that in the negotiations you had with Blair you were advised at an early state of those negotiations that Blair was a member firm of both the New York Stock Exchange and the AMEX.

A That is correct, sir.

Q Were you advised as to whether or not Blair belonged to any other stock exchange?

A I believe I was. I believe it was a member of the Pacific Exchange, at least following the Schwabacher acquisition, which predated my discussions with Blair -- my initial discussions with Blair.

Q How about the Midwest Stock Exchange?

A Yes. I believe it was a member of the Midwest as well.

Q Do you recall any others?

A I don't recall any others. It is conceivable it might have been a member of other exchanges.

Q But you do recall a specific reference to New York, AMEX and Midwest?

A That's correct, sir.

Q During this period of negotiations, Mr. Foley -- by that I mean some time from January 1970 up until April 3rd, up to and including April 3, 1970 -- did you become familiar with the constitution and rules of the American Stock Exchange

A No; I did not.

Q Did you ask anyone to study those rules and brief you as to their contents?

A No; I did not.

Q During this period -- and again I am talking about January to April, through the closing, of 1970 -- did you personally have any communications with anyone at the AMEX concerning your proposed investment in Blair & Co.?

A No; I did not.

MR. LOFLIN: I have no further questions.

THE COURT: Thank you, Mr. Loflin.

Mr. Fried?

REDIRECT EXAMINATION

BY MR. FRIED:

Q Dr. Foley, in giving your educational qualifications, you were asked if you had a Phi Beta Kappa award; is that correct?

A I was asked that question, yes, Mr. Fried.

Q In all of your formal education, did you ever take any course in accounting?

A No.

Q Did you ever take any course in commercial law?

A No.

Q Did you ever take any course in business administration?

A No.

Q You were asked by Mr. Foley regarding --

THE COURT: By Mr. Reilly.

MR. FRIED: I am sorry.

Q You were asked by Mr. Reilly about certain work that you performed for a number of firms, namely, Blair Corporation, Lehman Bros., Reynolds Company -- this is page 35 -- Dean, Witter, Hayden, Stone; Williston & Beane.

Will you tell the Court and jury what was the name of the services you performed for those firms?

A The evaluation of applicants for jobs in those firms

and an occasional current employee who was being considered for transfer or promotion to a different job. And all of the work that we did for those firms since the inception of J. P. Foley & Co., Inc., fell into that single area of service: consulting service.

I did no work in any other consulting areas for any of those firms.

Q Mr. Reilly also asked:

"Isn't it fair to say that you had done consulting work for many investment firms for more than twenty years?"

Your answer was: "That's correct."

What services did you refer to in connection with the words "consulting work"?

A I referred to the evaluation of applicants and current employees in the firm for which we were working? I referred to an occasional assignment involving the training of one or more interviewers, and that was it.

Q Did you ever, in the twenty years that Mr. Reilly was referring to, ever render any services in connection with the appraisal or evaluation of securities on the exchanges?

A The evaluation of securities?

Q Yes.

A No.

Q Did you ever render any services in the nature of a security analyst?

A No.

Q Dr. Foley, you were asked this morning about the letter that you received dated August 5, 1970.

MR. FRIED: May I have Exhibit J, please.

Q (Continuing) I show you now --

THE COURT: Exhibit J?

MR. FRIED: Exhibit J, your Honor.

THE COURT: That is the letter of August 5th -- whatever date it is -- to Mr. Ramsey.

THE WITNESS: That is correct, sir.

A I have it, Mr. Fried.

Q You were asked the question of whether or not you sought the advice of Mr. Feldman following receipt of that letter, and your answer was yes; is that correct?

A That is correct, sir.

Q What advice did Mr. Feldman give you at that time?

MR. REILLY: I object, your Honor. I tried to get this out, and there was an objection by counsel.

THE COURT: Well, if there was an objection, all such objections have been overruled. I know once or twice Mr. Fried wanted to make sure that the document Mr. Foley was looking at was not privileged, and that was sustained, of

course.

A Well, subsequent discussions that I had with Mr. Feldman related to what we could do, what remedy if any we had following this turn of events, the occurrence of -- namely, the -- following the threatened liquidation of our subordinated securities.

THE COURT: That letter related to the liquidating of securities; is that right?

THE WITNESS: Yes. This letter says, in essence, your Honor, for the jury --

THE COURT: No. We all agree that it indicates that your securities might be liquidated.

THE WITNESS: That's right, sir, and it gave me an opportunity to put up money to get them back.

THE COURT: Well, the letter will speak for itself before the jury. If counsel disagree with that characterization, I will overrule it, but let's not characterize it any further.

THE WITNESS: All right.

Q Dr. Foley, at the time you received that letter did you have any information whether any holdings, whether they were by insiders or outsiders, in the nature of subordinated loans had been liquidated?

A No; I did not -- prior to the receipt of the letter.

Q You were asked yesterday whether it wasn't true that you didn't concern yourself with the anticipated losses of Blair & Co. because you understood that your cushion in the formula was all the protection you needed, and your answer was: "I would say the latter part of your question following the word 'because' was one, but not the only reason why I didn't ask questions about the losses."

Will you now state what were the other reasons you didn't ask about losses in Blair & Co.?

MR. FRIED: That was page 72.

A There were many other reasons, Mr. Fried. One would have been -- one was the statement that had been made to me by Mr. Rush to the effect that Blair in his considered judgment would be in the black by May 1, 1970 and by June 1, 1970 for sure. That was one consideration.

Another consideration would be -- and was -- the nature of the business in which Blair was engaged. Blair was, according to my understanding, a securities firm or a bank, in a sense a bank, in which the money of people was deposited, and they held -- they held credit accounts of customers.

MR. REILLY: I object to this on the ground of competence, your Honor. He is not qualified --

THE COURT: He is explaining why he didn't do something, and he is giving his reasons why, and he is giving

his understanding of what Blair was. He is not guaranteeing he is right, but this was just what Dr. Foley believed Blair was.

A (Continuing) Another fact was the long history of Blair, dating back to the previous -- to the last century. Another factor was the statement that Mr. Vanderbilt had made and had written, actually, on the back of the certified statement of Arthur Young, to the effect that things looked bright for the future of Blair.

Another consideration was Blair's membership in the New York Stock Exchange. Still another consideration was its membership in the American Stock Exchange.

There may have been other factors, but those are the ones that occur to me at this time. I should add, I did have, as I indicated before, complete confidence in the integrity of the people with whom I was dealing.

MR. FRIED: May I have Exhibit B and Exhibit C.

Q Dr. Foley, I show you Defendants' Exhibit B, which you were questioned about by Mr. Reilly yesterday, and I ask you now, what is your best recollection as of now as to whether or not you ever received that from Mr. Rush prior to April 3, 1970.

THE COURT: Will you remind us, Dr. Foley, what that is, the title of it, or something?

THE WITNESS: This is a statement of income. There is no firm mentioned, but the assumption would legitimately be Blair -- for February February 1970.

THE COURT: All right.

THE WITNESS: That is on page 1. There are other headings, your Honor, on the other pages.

THE COURT: Just so the jury and I have some idea of what you are talking about.

THE WITNESS: Yes, sir.

Would you repeat your question. I am sorry, Mr. Fried --

Q What is your recollection now, after all these years, and having reviewed all of the documents that you have available to you, as to when you first saw that document?

A I do not recall when I first saw that.

Q Had you received that prior to April 3, 1970, from Mr. Rush?

A To the best of my knowledge, I had not.

Q Dr. Foley, I will show you Exhibit No. 15, which is a letter dated March 10, 1970, concerning which you were questioned by Mr. Reilly yesterday, and I ask you: what is your recollection as to when you received that document for the first time or saw it for the first time?

A It is my considered opinion that the first time I

saw this was some time after we commenced litigation against the defendants in the Blair action.

Q By the way, Dr. Foley, you have testified in a number of proceedings by way of deposition, namely, in Foley against the New York Stock Exchange, Foley against Vanderbilt and in the bankruptcy proceeding.

Do you know the total number of pages of testimony that you have given in those three proceedings?

MR. REILLY: I object. Whatever is relevant might be produced, but I don't know about the number of pages.

THE COURT: Overruled.

Q (Continuing) You may answer the question.

A I do not know the number, but I'm sure it's a very large number.

MR. FRIED: Mr. Reilly, will you concede that the depositions in those three proceedings total 1624 pages, or roughly that?

MR. REILLY: No; I will not. I am not aware of it. I know what the depositions in this case consisted of, and I don't know --

THE COURT: All right.

Q Dr. Foley, you were asked yesterday about certain testimony with regard to the letter of March 1th, as to when you received it. I ask you at this time whether you were

examined on April 9, 1973 and whether you were asked these questions and made the following answers.

MR. REILLY: Objection.

THE COURT: Let me ask, first of all: is that a deposition in this case?

MR. FRIED: Yes, your Honor.

THE COURT: I think I had better see counsel in the robing room before you read that.

(In the robing room:)

THE COURT: On what basis, Mr. Fried, do you believe that you have a right to read from the witness' deposition?

MR. FRIED: When a witness is challenged as to his credibility and shown a prior inconsistent statement, to rehabilitate the witness, a prior consistent statement is always admissible.

MR. REILLY: On a prior consistent statement? I recognize the rule as to a prior inconsistent statement --

MR. FRIED: I have a case, White versus Zoutel --

THE COURT: There must be some way that you can show me that he has made statements that are consistent at another time. What is your case?

MR. FRIED: White versus Zoutel.

THE COURT: Do you have the citation?

MR. FRIED: No.

* * *

MP 19 J. Foley - redirect

THE COURT: Yes.

MR. REILLY: Your Honor, I did want to note that I could not stipulate as to sixteen hundred pages of testimony by Mr. Foley, because it's just simply not true. There may be sixteen hundred pages of transcript, but if you look through, particularly when he was represented by Mr. Feldman, there is page after page after page of argument.

THE COURT: I am not concerned about that, but, Mr. Fried, and all counsel, too: there are a couple of rules that I would like to lay down, which I consider to be fundamental.

I asked that none of you make any requests of another attorney to make concessions in the presence of the jury, and, second, when you are giving a witness a document and wish to question him about it, will you please, for the benefit of the jury and myself, state what the substance of the exhibit is, because we don't know. I am getting used to Plaintiffs' 13 and such, but you know those and I don't.

(In open court:)

BY MR. FRIEDMAN: (Continuing)

Q Dr. Foley, you have before you a letter dated March 10, 1970.

A That is correct.

Q That bears what exhibit number?

A 15.

Q That is a letter on the letterhead of the New York Stock Exchange, addressed to Mr. Ramsey; is that correct?

A That is correct, sir.

Q You were questioned about that yesterday, as to when you first saw it; do you remember?

A That's my recollection; yes, sir.

Q Do you recall being examined in deposition on Monday, April 9, 1973 and being asked these questions and giving these answers: --

MR. FRIED: Page 123.

"BY MR. REILLY:

"Q I show you Defendants' Exhibit B, which appears to be a photocopy of a letter on the letterhead of the New York Stock Exchange, dated March 10, 1970, addressed to Mr. Ramsey, and I ask you if you have ever seen this before or a copy of it."

Then there is some colloquy, and the question is put again:

"Notwithstanding your counsel's lack of trust, will you answer my question?

"A Your question was, have I seen this?

"Q Yes.

"A Yes. I have seen this.

"Q When did you see it?

"A I can't tell you exactly.

"Q Approximately when?

"A Fairly recently, within the last six or eight months.

"Q Is that the first time you saw it?

"A That is right.

"Q Did you ever ask, back in March and up to April 3, 1970, that anyone furnish you with a copy of such letter?

"A I didn't know it existed.

"Q You didn't know it existed?

"A That's right, sir. This letter was never shown to me. It was never mentioned to me prior to April 3rd.

"Q You were unaware of its existence prior to April 3, 1970?

"A Yes, sir, in capital letters.

"Q You are absolutely positive?

"A Yes, sir. One hundred per cent."

Q (Continuing) Were you asked those questions by Mr. Reilly and did you give those answers on April 9, 1973, Dr. Foley?

A To the best of my recollection, yes, sir.

Q And you were askedagain, on page 181:

"Q Did you ever tell Mrs. Salisbury that you represented

to the Stock Exchange that you were familiar with Blair's books and records problem and that the exchange had placed restrictions on Blair, as set forth in its letter of March 10, 1974? Did you ever tell her that?

"A I couldn't have, because I had never heard of or seen any reference to a letter of March 10th, so I obviously couldn't have communicated that bit of intelligence to Mrs. Salisbury, since I didn't know anything about such a letter. I had never seen it and had never been told of its existence.

"Q I think you so testified earlier today.

"A Right."

Dr. Foley, do you recall giving a deposition on May 4, 1972, in the case of Foley against Vanderbilt?

A I believe I do; yes, sir. It was around that time.

Q Do you recall being questioned in that deposition regarding this letter of March 10, 1970?

MR. REILLY: I am going to object to pursuing this line, your Honor. This was in another action.

THE COURT: Well, I ruled inside that I was not in a position to tell whether you read questions from this transcript. If you did not, I agree with you. I don't have an instant recollection.

Can you tell me whether you did?

MR. REILLY: Not about this letter.

THE COURT: If there wasn't any questioning from the deposition in the Vanderbilt case about the March 10th letter on cross-examination, I will sustain the objection.

MR. FRIED: I think there was not.

THE COURT: All right.

Q Dr. Foley, I show you Plaintiffs' Exhibit 9, and part of that exhibit is a note dated April 3, 1970, which Mr. Reilly referred to this morning, for the total sum of $3,784,349. Do you recall that?

A Do you mean, do I recall his questioning me about it?

Q Yes.

A Yes; I do.

Q Now, at the time this note was signed, had you delivered any stock at all to Blair & Co.?

A What was the date of that, again, Mr. Fried?

Q April 3, 1970.

A No. None of my party have delivered any stock to Mr. Blair.

Q Did you ever deliver the Amicon stock to Blair & Co.?

A Yes; I did.

Q Was the Amicon stock included in the list --

MR. REILLY: I think this was covered on direct

MP 24 J. Foley - redirect

examination, your Honor, and it was not gone into on cross. I wonder why it is appropriate for redirect.

THE COURT: I can't answer that question, Mr. Reilly, but Mr. Fried is an experienced attorney. I assume he has some reason for doing it.

MR. FRIED: Mr. Reilly wanted to know why a note was signed for $3,700,000 when the securities were worth $2,700,000.

THE COURT: Without the jury accepting Mr. Fried's statement as to how much the proper sums were here, I will allow him to proceed with his questioning.

Q Dr. Foley, will you look at Exhibit 9, at the list of securities and the evaluations there,and tell us whether or not the Amicon stock was valued at that time for any dollar amount at all.

A The Amicon name is here, and the number of shares is here, but there is no figure indicating the value to be attached to those shares.

Q Did you, after April 3rd, deliver the Amicon stock to Blair & Co.?

A I did.

Q How long did they hold the Amicon stock?

A You mean, after the closing or after the time it was delivered?

MP 25 J. Foley - redirect

Q After the time it was delivered -- the stock.

A I would guess a couple of weeks.

Q And the Amicon --

A It could be as long as three or thereabouts.

Q Was the Amicon stock returned to you, Dr. Foley?

A Yes; it was.

MR. FRIED: At this time, your Honor, I offer -- I will withdraw that.

Q Dr. Foley, I show you your affidavit in Foley against Vanderbilt, part of which was offered by Mr. Reilly, and ask you whether or not that is the complete affidavit that you signed at that time.

A Yes; this is the one I signed.

Q Who prepared that affidavit?

A Milberg & Weiss, according to the best of my recollection -- the best of my knowledge.

THE COURT: Does it have an identification number?

MR. FRIED: Not yet, your Honor.

May I have it marked?

(Plaintiffs' Exhibit 19 marked for identification.)

MR. FRIED: Your Honor, at this time I offer Exhibit 19 for identification, which is the entire affidavit signed by Dr. Foley.

MR. REILLY: I object, your Honor.

THE COURT: Is this the one from which you put in an excerpt?

MR. REILLY: Yes, your Honor.

THE COURT: I will have to look at it. I can't tell. Can I defer that, Mr. Fried?

MR. FRIED: Yes, your Honor.

MR. REILLY: It's the same as our Exhibit F for identification, your Honor.

THE COURT: Thank you.

Q By the way, Dr. Foley, you mentioned the firm of Milberg & Weis. I don't think there is any explanation in this record yet as to who Milberg & Weiss are or were.

A That is the law firm that instituted the present and other legal actions.

THE COURT: By that you mean they represented you at the time you instituted them?

THE WITNESS: Yes; that's what I mean. They instituted them on my behalf.

THE COURT: All right.

Q Dr. Foley, just to complete the record, is it a fact that my firm, Hawkins, Delafield & Wood, succeeded Milberg & Weiss as your attorneys?

A That's right, sir.

Q As the attorneys for all the plaintiffs?

A That's right, sir.

Q Dr. Foley, I show you Plaintiffs' Exhibit 14, which is an application you signed for allied membership in the New York Stock Exchange, and ask you whether or not you received any acknowledgement from the New York Stock Exchange since you signed that, on April 3rd.

MR. REILLY: May I have the question?

THE COURT: Whether he received any acknowledgement after he signed that delivered the application.

MR. REILLY: I think it was characterized as an application for allied membership.

THE COURT: What is it called?

MR. REILLY: It's an application for approval as a subordinated lender.

THE COURT: Well, let's call it "the exhibit".

(To the witness:) After you sent in the exhibit, was it ever acknowledged by the Stock Exchange, Mr. Foley?

THE WITNESS: My answer is, I have had no answer from the New York -- or no communication from the New York Stock Exchange relating to this document.

THE COURT: Whatever it is called?

THE WITNESS: At any time, up to this date.

Q Is the same thing true of Blair & Co.: you never received any acknowledgement?

A Relating to that document?

Q That is correct.

A That is correct. The same answer: no communication

Q Dr. Foley, there was some mention made of the arbitration proceedings before the New York Stock Exchange, and I believe only one member of the panel was referred to. Who were the other two members?

A One was a vice president of a brokerage firm, the name of which I do not recall. The other was a vice president of the Chemical Bank.

Q How long did the proceeding last?

A I would extimate approximately an hour and a half. It could have been as long as two hours; it could have been as short as an hour and a quarter. Somewhere in that range: an hour and a half would be my best estimate.

Q Was the only question involved there whether or not you were entitled to the return of your securities?

MR. REILLY: Excuse me, your Honor. I think these questions should await your Honor's resolution of the documents that I proposed in connection with the arbitration proceeding.

THE COURT: Let's get it out of the way. I would like to hear what the views of counsel are on that point.

MP 29 J. Foley - redirect

(In the robing room:)

THE COURT: Let me ask Mr. Reilly to say first why he went into the arbitration proceedings?

What do you think that establishes?

MR. REILLY: I think it reflects a misunderstanding which might more properly be laid at Mr. Feldman's feet than at Mr. Foley's.

MR. TURETSKY: I don't think that is proper.

THE COURT: Mr. Turetsky, let Mr. Reilly have his say. Whether you think it is proper or not is irrelevant.

MR. REILLY: It reflects a misconception of the rights he thought he had under the withdrawal provisions of the agreement.

THE COURT: All right.

MR. REILLY: He contended in this proceeding that his rights as of August 10th, at least, or 11th and 12th of 1970 had matured, entitling him to -- I guess some securities actually had been sold, but there was a substantial block of it still remaining, and he wanted to exercise his withdrawal rights as to that.

He brought a proceeding in New York County.

THE COURT: I know all of that. Now, what will the papers show if they are admitted?

MR. REILLY: They will show, first of all, that

there was an arbitration agreement, and he must arbitrate this under the New York Stock Exchange rules.

THE COURT: He hasn't disagreed with that. What is there beyond what we already know?

The jury knows there was an arbitration and he lost it.

MR. REILLY: He indicates the issues that were litigated in the arbitration. It has the order of the proceedings, the full transcript.

THE COURT: I know, but what good will it do the jury to have the transcript of the arbitration proceedings before them? There is no question he indicated he got a bad deal, but I am not going to ask the jury to read the transcript and determine whether he had a misconception or not.

You are perfectly free to argue that he had a misconception. I think you have laid the framework for that. I am concerned about two things here, among others:

The first is cluttering up the record, or, to put it another way, putting in a lot of things before the jury that might be confusing rather than helpful to them, aside from the question of relevancy or anything else, and I wou be disinclined to put those papers in evidence, not to prevent you from referring to them.

Now, if there is any particular passage within those

papers which you are concerned you might be precluded from reading to the jury in summation and which you would like to read to the jury in summation, I will consider such passages to see if they can go into evidence, so you can make any argument you want to --

MR. REILLY: I did go through it. We tried to pin it down to the issues that were raised.

I have the transcript. The arguments were similar to the arguments that were made here, made by Mr. Feldman, and the arbitration panel rejected it.

THE COURT: That concerns me even more, because I don't want the jury to be influenced by some ruling of the arbitration panel which they might feel would have some precedental effect here, which we all know it does not.

Mr. Brooks, what do you want to say?

MR. BROOKS: We would urge that these exhibits be admitted. The way the record stands, it seems that Dr. Foley got a poor shake because he was required to arbitrate the matter before the Stock Exchange. I think this will put in perspective that the reason this was ordered by the State Court was because Mr. Foley had signed an agreement, as is normal, between an investor and a firm.

THE COURT: That can be brought out on recross by simply asking him whether he didn't sign such an agreement,

and if he says he didn't, all you have to do is show it to him

So there is not problem in letting the jury know that he agreed to arbitrate before the Stock Exchange.

MR. BROOKS: I have another point. The second point is that the plaintiffs in their trial memorandum have made a great fuss over the fact that the liquidation of the insiders' securities in April prevented the formula from working as Mr. Foley expected that it would work.

In other words, what he is saying is that the market value of the securities was the barometer in the formula, and by converting the securities into cash, albeit still subordinated cash, Blair deliberately thwarted the formula permitting Mr. Foley to get out.

Mr. Foley made this argument in his arbitration and was ruled against -- it was ruled against him. That should properly preclude him from re-arguing it here.

THE COURT: That is a question of law. It certainly is not to be handled by putting the documents in the previous proceeding in front of the jury.

MR. BROOKS: But we can't argue that until we have these documents in the record here.

THE COURT: If you want to put them in the record for the purpose of making an argument of law, I don't think you need to put them in the record. Mark them for identifica-

tion, present them to me and make whatever argument you want to preclude him from arguing something else. Either he will be precluded or he will not; but whether he is precluded or not, I don't see that these papers ought to go to the jury. If you wanted to establish any such point that you are making to the jury -- and I am not saying at this stage whether you have the right to, as far as putting them to the jury, underlining the word "jury" -- that would have to be done by calling a witness who participated in the proceedings and asking him questions and letting Mr. Fried cross-examine him. We will never get to that.

But this question seems to be a question for the Judge. You can make whatever argument you want. If I don't agree, I will tell the jury they are not to consider Issue X, whatever it is.

Now, Mr. Fried, in the light of all that, what are you trying to bring out about the arbitration proceedings?

MR. FRIED: Well, your Honor, my position has been from the beginning that Vanderbilt and the arbitration proceedings and the bankruptcy proceedings are immaterial and irrelevant to this case. The door has been opened, so therefore I merely want to show what the issue was. That's all.

THE COURT: If you want to show what the issue was, all right. I think it's been discussed once before, and it

can be discussed again.

Now, let me make my position clear on the significance of these other proceedings. I think that counsel are entitled to ask about those proceedings, or, rather, whenever in those proceedings Dr. Foley made any statement which is inconsistent with his testimony here, and I see that you agree with that.

There also may be, as we know, occasionally questions in relation to any subject that affects the credibility of the witness in a kind of general way.

Other than that, the existence of the proceedings or the determination of issues within the proceedings does not seem to me to be -- well, to put it differently, either not relevant or, if relevant, is a matter for the Judge, who will determine, as for example, on the issue raised by Mr. Brook[illegible], whether or not that has any effect in this case.

All right.

MR. REILLY: Thank you, your Honor.

(In open court:)

BY MR. FRIED: (Continued)

Q Dr. Foley, just returning to the arbitration for a moment, was the issue involved there the return of your securities?

A Yes; that is correct, sir.

MR. FRIED: May I have just a moment, your Honor?

THE COURT: Certainly.

(Pause.)

MR. FRIED: I have no further questions.

THE COURT: Mr. Reilly, is there anything further for this witness?

MR. REILLY: I have a few questions, your Honor.

RECROSS-EXAMINATION

BY MR. REILLY:

Q Mr. Foley, did you ever fix a value on the Amicon stock?

A No; I did not.

Q That was not the subject of any discussion between you and any Blair representative?

A I was asked a question about it.

Q Were you asked --

A What was asked of me?

Q What the value was, or anything like that?

A No; they didn't ask me the value of that. They asked me -- would you like me to tell you what they asked me in that regard?

Q No --

A They didn't ask me for a number, to the best of my recollection, although there was a discussion of how it would

be evaluated.

Q Did you ever, even in your own mind, fix some value for it?

A No; I did not.

Q How much did you pay for it?

A I don't recall the exact amount, Mr. Reilly. I think it was -- I would have to estimate it.

THE COURT: You can estimate it.

Q May we have an estimate?

A Yes. It would be somewhere between 150 and 200 or 225 thousand dollars.

Q Is that stock owned by J. P. Foley & Co., Inc., as opposed to the other three plaintiffs?

A No. It's my recollection, no. That stock is owned --

Q By you personally?

A I had most of that. I believe Mrs. Salisbury may have had some, but I don't recall. I would have to look at the list, Mr. Reilly.

Q Does your corporation own any of it?

A No.

Q Just one other area:

On redirect examination, Mr. Fried read portions of your deposition in this action concerning the March 10th

letter. You stated in response to whether you were aware of its existence prior to April 1970, "Yes, in capital letters, a hundred per cent positive", and so forth.

Then, at page 181, you indicated why you never informed Mrs. Salisbury of that letter, and you said:

"Because I had never heard of or seen any reference to a letter of March 10th, so I obviously could not have communicated that to her" -- to paraphrase the balance.

By question is, sir: since you testified that you read Exhibit 13, the April 3, 1970 letter of you to the New York Stock Exchange, which specifically states as set forth in its letter of March 10, 1970, how can you contend that you were not even aware of its existence or that you had not seen any reference to it?

A I can contend it because I did not prepare that letter, and I didn't know what they were referring to, whoever prepared it, when they spoke of a letter of March 10th.

Q But you testified you had never even seen any reference to a letter of March 10th.

A I did not make any connection of this sort, Mr. Reilly, in my own mind. That was the state of my mind at the time. I made no such connection.

Q Even though you had been examined on the same morning with respect to the April 3rd letter also, you made no

connection?

A I beg your pardon. I am talking about the time of the closing, when I signed the so-called knowledgeability letter. I am talking about my state of mind at that time.

Q I am talking about your state of mind when you testified under oath at your deposition that you had never even seen any reference to a March 10th letter.

A I did not make any such connection in my mind at that time. I think that is right, sir.

THE COURT: I think you gentlemen are talking in different tenses. Dr. Foley is saying that when he testified he had not in 1970 seen or recognized the connection of such a letter, although he is prepared to admit at the moment there was such a reference in the April 3rd letter.

Is that right, Dr. Foley?

THE WITNESS: That's right. That's exactly right.

MR. REILLY: The answer, your Honor, was, in response to whether he had communicated any of that information from the March 10th letter to Mrs. Salisbury. His answer was, "I couldn't have, because I had never heard of or seen any reference to a letter" --

THE COURT: I understand that. There is no point in going on indefinitely. You construe that one way and he construes it the other way.

MR. REILLY: I have no further questions.

MR. FRIED: That is all.

THE COURT: All right. Thank you very much, Dr. Foley.

(Witness excused.)

THE COURT: Call your next witness, please.

MR. FRIED: I call Mrs. Anita Salisbury.

(Continued on next page.)

* * *

Q Do you know what happened to them?

A They were sold.

Q By Blair & Company?

A That is my understanding.

Q Did you ever have any conversations with any representatives of the New York Stock Exchange?

A No.

Q Did you ever have any conversations with any representatives of the AMEX, the American Stock Exchange?

A No.

MR. FRIED: That's all.

CROSS EXAMINATION

BY MR. BROOKS:

Q Mrs. Salisbury, could you tell the jury your educational background?

A I have a B.S. degree from Long Island University.

Q Have you ever taken any courses in accounting?

A In my freshman year in college I had accounting.

Q How much?

A A year.

THE COURT: How do you do on your own check-book?

THE WITNESS: I do all right.

THE COURT: That's better than me.

* * *

CROSS EXAMINATION

BY MR. LOFLIN:

Q Mrs. Foley, I am the attorney for the American Stock Exchange. You may recal Mr. Brooks asked you a question if you had any contact with the New York Stock Exchange between January 1970 and August 1970, and I ask you that same question as to the American Stock Exchange.

Did you have any contact with them between January 1970 and August 1970?

A No, I did not.

MR. LOFLIN: Thank you.

REDIRECT EXAMINATION

BY MR. FRIED:

Q You are Dr. Foley, too?

A Well, yes.

Q You have a Ph.D, is that right?

A Yes.

Q Dr. Foley, I show you Exhibits U and V and ask you if you had anything to do with the preparation of either of those two documents.

A No, I did not.

Q Do you know who did prepare those documents?

A Well, I assume Dr. Foley did, possibly with Mrs. Salisbury's help, since she is employed there.

* * *

(Jury present)

THE COURT: You may proceed.

Will you advise the jury whose deposition you are reading.

MR. FRIED: With your Honor's permission, this is a deposition taken of Mr. Oliver DeGray Vanderbilt on Monday, January 5, 1976, in Philadelphia.

THE COURT: Can the members of the jury hear all right? If not, please let us know.

MR. FRIED: Mr. Vanderbilt was the chairman of the board of Blair & Company.

THE COURT: All right.

MR. FRIED: We will start with marking as Exhibit Vanderbilt 1, which I am going to offer at this time in this proceeding as Exhibit 19-A.

MR. BROOKS: Vanderbilt Exhibit 1?

MR. FRIED: Yes.

MR. BROOKS: May we look at it?

(Pause)

MR. BROOKS: The Exchange does object, your Honor. This is noe page of a multi-page report. Unless there is some reason for offering only this page without the remainder of the report or even the signature on the report or the date that the report was prepared --

THE COURT: I understand your point, of course--

MR. BROOKS: I will object.

MR. FRIED: T his is the way the deposition was conducted, your Honor. I can't conduct anything more at this point.

THE COURT: You can offer more with the indication --

MR. FRIED: I can offer the entire report.

MR. BROOKS: We would have no objection to the entire report.

THE COURT: Let me suggest that the entire report be admitted in this trial with a special tag to indicate the circumstances under which it is admitted.

MR. FRIED: In plage of Exhibit 19-A, I offer this report.

THE COURT: Will you specify what page of the testimony you are referring to.

MR. FRIED: Page 19.

THE COURT: No, I mean what page of the exhibit. I take it Mr. Vanderbilt referred to a particular page of this report.

MR. FRIED: He just just shown this one page, your Honor.

THE COURT: What page number is it?

MR. BROOKS: 1.

THE COURT: Is it the first page?

MR. BROOKS: Yes.

THE COURT: All right.

Does the jury understand what happened here? All right.

(Plaintiffs' Exhibit 19 was received in evidence)

MR. FRIED: After the witness was shown this first page, he made an answer.

"A You are asking me if this was distributed to the board of directors? I don't recall. I don't know; I don't know."

Now we will continue with the deposition.

THE COURT: The board of directors referred to I take it is Blair's board of directors, is that correct?

MR. FRIED: That's correct.

"Q You don't presently recall?

"A No.

"Q Do you recall whether you received such statements periodically?

"A I would doubt it as a matter of course. This would have been prepared by the operations people

in Blair & Company and submitted to the New York Stock Exchange, and, obviously, it would have been of interest to those operational people to keep your capital ratios in balance but more meaningful business type of financial reports were prepared for the board of directors."

MR. FRIED: I will ask if the jurors can hear that.

THE COURT: Can you hear the reader?

"Q Give me examples of what you mean by more meaningful types of statements.

"A Well, why don't you go and ask Blair & Company to furnish you the reports that were submitted to the board of directors every month?

"Q Well, you said more meaningful types of reports were disseminated to you.

"A They were more equivalent, as I recall, to corporate profit and loss statements and corporate balance sheets, as opposed to something like that.

"Q And were they disseminated monthly?

"A Right.

"Q Balance sheets and P and L statements?

"A Yes."

MR. FRIED: May I interject here and put in my own explanation of what P and L statements mean?

THE COURT: Yes.

MR. FRIED: Profit and loss statements. I assume that is agreed to.

"Q Do you recall how long after the end of each month you were able to obtain a balance sheet for the end of that particular month?

"A No.

"Q Or P and L statement?

"A No.

"Q Do you recall whether or not Blair & Co., Inc. sustained losses in 1969? I am talking about calendar 1969.

"A You mean for the year as a whole?"

MR. BROOKS: Objection --

MR. FRIED: I was just reading the answer.

"A I don't recall.

"Q You don't recall whether they sustained losses?

"A No.

"Q When was the last time you recalled --

"A What?

"Q Whether or not Blair & Co., Inc., sustained losses in 1969?

"A I don't know.

"Q Do you recall whether Blair & Co., Inc., sustained losses in 1968?

"A I don't know that for sure.

"Q Do you recall whether it sustained a loss in 1970?

"A It is easy enough to find out.

"Q I want to know what you recall.

"A It is easy to check that. I don't recall specifically whether they were profitable or in a loss situation in 1969.

"Q Do you recall whether Blair & Co., Inc. sustained a loss subsequent to September 26, 1969?

"A I don't recall.

"Q Do you recall whether Blair & Co., Inc. ever sustained losses?

"A Well, of course, there were substantial losses or they would be in business today.

"Q So we can agree that Blair & Co., Inc. sustained substantial losses?

"A Right, at some point in time, obviously.

"Q Do you recall whether it sustained losses prior to the time Mr. Foley and the other plaintiffs in the instant action subordinated their capital to Blair & Co., Inc.?

"A You mean the time at which they made their investment in Blair?

"Q Was Blair sustaining losses at that time?

"A You mean on a yearly basis?

"Q For any reporting period prior --

"A I don't recall when Foley made his investment in Blair.

"Q If I told you it was April 3, 1970, would that help refresh your recollection?

"A If that is the date, that is the date.

"Q Okay. Let's use that date. Do you recall whether Blair & Co., Inc., sustained any loss prior to April 3, 1970?

"A I don't recall specifically.

"Q I would like to bring your attention to the Schwabacher situation.

"How did you first become aware of the Schwabacher situation and the possibility of an acquisition or a merger between Blair & Co., Inc., and Schwabacher?

"A The question was how?

"Q Yes.

"A I don't recall.

"Q Did somebody within Blair & Co., Inc. bring it to your attention?

"A I would assume so.

"Q Do you recall who it was?

"A No.

"Q Who was president of Blair & Co., Inc. at that time?"

MR. FRIED: There is no answer.

"Q When you first became aware of the Schwabacher acquisition.

"A Bill Lendman.

"Q How did Mr. Lendman come in to Blair & Co., Inc., do you recall?

"A Through a merger. He was with the firm of Granberry and Marache, and Blair & Company merged with Granberry and Marache, or vice versa.

"Q What was your position at Blair & Co., Inc., at the time?

"A Chairman of the board.

"Q How long had you been chairman of the board, do you recall?

"A A few months.

"Q Now, when Schwabacher was first proposed as a potential acquisition, do you recall any discussions that you participated in concerning whether or not Blair & Co., Inc., should consider such an acquisition?

"A Obviously, it was a substantial acquisition, and there were many discussions.

"Q Was the proposal initially declined, as you recall?

"A It might have been.

"Q Did there come a time when Mr. Lendman spent considerable time evaluating Schwabacher?

"A Yes.

"Q Do you recall when that was?

"A No, I don't recall the specific dates.

"Q But it was prior to the acquisition?

"A Right.

"Q Did he go out to the West Coast?

"A Yes.

"Q And spend time there?

"A Yes.

"Q Excuse me. She can only take one of us at a time.

"A All right.

"Q Did he report back?

"A Yes.

"Q Did he report to you?

"A Not specifically.

"Q Were you among the people to whom he reported

back?

"A I would say yes, as a member of the executive committee and board of directors.

"Q And chairman of the board?

"A Right.

"Q Do you recall what he reported?

"A He reported a lot of things.

"Q Well, tell me what you can recall.

"A I can't recall specifically what he reported.

"Q Can you recall any portion of what he reported?

"A No.

"Q Did he report on the condition of the Schwabacher

MR. BROOKS: I object to the answer because it is based on an assumption and not knowledge.

THE COURT: May I see the answer, please.

I will sustain the objection to the answer.

"Q Do you recall what the report was?

"A No.

"Q Do you recall receiving a report prior to the acquisition of Schwa-acher by Blair, that there were back office problems at Schwabacher?

"A I know Schwabacher had problems, obviously, or they wouldn't be available for our consideration. We were encouraged to look" --

MR. BROOKS: I object to continuing this answer there, because it is plainly based on hearsay, as you can tell, if you read line 19 on page 27 and continue over to page 28, line 14.

The witness shows that this was something that was told to him by somebody else.

THE COURT: Well, I take it that the material on 19 and so forth is not going to be read, is that right?

It is stricken out of this copy.

MR. FRIED: Whatever I have stricken out there, your Honor can see.

THE COURT: The objection is overruled.

"A I know Schwabacher had problems, obviously, or they wouldn't be available for our consideration. We were encouraged to look at the Schwabacher situation by the New York Stock Exchange, so, obviously, the New York Stock Exchange must have had some concern about them, and I recall that they were seeking a stronger, healthier firm to take over Schwabacher.

"Q You state that the New York Stock Exchange urged you to take it over; is that correct?

"A Right."

MR. BROOKS: Your Honor, I object. There was

an objection in the transcript at that point to the characterization.

THE COURT: Of what? The takeover?

MR. BROOKS: No. "Urged".

THE COURT: Yes.

MR. BROOKS: And the interjector, Mr. Weiss, corrected himself and used the word "encouraged". And it was "Right", the answer that was given, was to the question "encouraged".

MR. FRIED: I will read the page again.

"Q You state that the New York Stock Exchange urged you to take it over.

"Mr. Brooks: I object to the characterization.

"Q Is that correct?

"Mr. Brooks: The word the witness used was 'encouraged'.

"Mr. Weiss: All right; encouraged.

"A Right.

"Q Were you aware that Schwabacher had converted to the Midwest System prior to the acquisition?

"A Right.

"Q Do you recall any conversation concerning how the Midwest System worked up at Schwabacher prior to the time that Blair made the acquisition?"

MR. BROOKS: Objection to the answer as hearsay.

THE COURT: Sustained.

"Q Is it your recollection that at some point it was chaotic but you don't recall whether the chaos had been remedied prior to the acquisition or not?

"A That is correct."

MR. BROOKS: Same objection, your Honor.

THE COURT: What?

MR. BROOKS: Same objection. Obviously it continues.

THE COURT: No, if it is because he said that before, I don't agree with you. It is clear enough. He said it is his recollection.

I think he said that's correct.

"Q Did there come a time when the acquisition was made?

"A Right.

"Q Do you recall when that was?

"A I would guess the early part of 1969."

MR. FRIED: Your Honor, I have a request by Mr. Brooks to read certain portions. That will interfere with our continuity, so I will ask that Mr. Brooks read it later on, if that is agreeable.

MR. BROOKS: That also destroys the continuity

"Q Do you recall that there was contact with the New York Stock Exchange concerning Blair's net capital problems and books and records problems prior to the time Mr. Foley, Mrs. Foley and Mrs. Salisbury and J.P. Foley & Company, Inc., made their investments on April 3, 1970?

"A I recollect that there was such a meeting held with the New York Stock Exchange early in 1970. Maybe it would have been in the latter part of January.

"Q That is the only meeting you can recall?

"A I think there were several meetings after that first one.

"Q And was there also other type of communications, such as memorandums and letters and correspondence?

"A Oh, right, yes, because after that meeting -- the exact date I don't recollect -- we agreed with the New York Stock Exchange that we would keep them abrest of the financial situation at Blair on at least a weekly basis, maybe even a daily basis. I don't recall.

"Q Do you recall whether they were present at Blair & Co., Inc., following the January meeting?

"A I don't know whether they were at Blair or whether somebody from Blair in consulting with them would walk over to their offices in the Exchange.

"Q All right, now, you testified that a meeting

* * *

was held in January of 1970; is that correct? Do you recall that meeting?

"A Approximately, I said.

"Q Do you recall that meeting?

"A Yes.

"Q Who was present?

"A I was present with Jim Ramsey who asked me to go along with him. Wait a minute now. No, I have to correct that.

"My recollection of that meeting is I believe that that meeting was with the SEC, and a member of the staff of the New York Stock Exchange was present at the meeting. I believe that is the meeting I am thinking of.

"Q Who was present from the New York Stock Exchange?

"A I don't recollect. Give me a few names. I think I could pick them out. I don't know those fellows well enough.

"Q Was Mr. Arning present?

"A No."

Can we at this point stipulate who Mr. Arning was?

MR. BROOKS: Yes, we can. Do you want me to supply that information? The vice-president.

MR. FRIED: All counsel agree Mr. Arning was a vice-president of the New York Stock Exchange.

"Q Mr. Stock?

"A I believe it was Stock."

MR. FRIED: Mr. Stock was assistant vice-president of the New York Stock Exchange?

MR. BROOKS: Yes.

MR. FRIED: (Reading)

"Q Tell me as best as you can recall, in words or substance, what was said at that meeting.

"A Mr. Ramsey reported to the assembled group certain things that concerned him about the back office situation at Blair, and he sought their help and guidance as to what should be done to alleviate or correct the situation."

I ask counsel if it isn't a fact that Mr. Ramsey at that time was the president of Blair & Company.

MR. BROOKS: We agree to that.

MR. FRIED: (Reading)

"Q What did he report to you concerning the back office?

"A I don't recall specifically.

"Q Do you recall generally?

"A There were problems surfacing.

"Q Surfacing? What were the problems generally?

"A I don't recall. Most of them were too technical for me to understand.

"Q Did he get into technicalities at that meeting?

"A Oh, I am sure he did.

"Q Do you recall that he did?

"A Right.

"Q Can you give me some idea of the type of technicalities he got into?

"A Oh, I would think the most obvious things: short positions that couldn't be reconciled, long positions that couldn't be reconciled, probably fail to delivers and all the other things that are symptomatic of a questionable condition in the back office.

"Q When did you first become aware that such problems existed?

"A I wouldpresume the first part of early 1970.

"Q How did you become aware of it?

"A Well, by Mr. Ramsey or Mr. Morpurgo advising me that they are having problems.

"Q Did anybody from the Arthur Young staff ever advise you of those problems?

"A Not directly.

"Q Mr. Vanderbilt, was it not standard procedure for the auditor to supply the members of the board of directors with a report following the conclusion of an audit?

"A Right.

"Q Did you receive such a report from Arthur Young?

"A I would assume so.

"Q Did you read it when you received it?

"A I would assume I looked at it. Most of it was meaningless to me.

"Q Which parts were meaningless to you?

"A Well, I don't know. You are probably more familiar with the form of such an audit report. It is quite dissimilar to what you would expect from a regular industrial corporation, obviously. Therefore, the technical --

"Q I want to correct the record.

"A -- aspects pertaining to the peculiarities of the securities business were not my cup of tea."

Certified Public Accountant Exhibit No. 3 was then marked in evidence. For the purpose of this proceeding we ask the it be marked Plaintiffs' Exhibit

19-C.

THE COURT: Hasn't that already been marked?

MR. FRIED: It has already been marked.

MR. BROOKS: I would like to see it.

(Pause)

MR. BROOKS: I assume counsel is going to continue reading the portion of the transcript in which the witness denies this. If he does that, I have no objection.

THE COURT: Do you wish to have it marked in evidence?

MR. FRIED: 19-C is now in evidence.

THE COURT: Received in evidence without objection.

(Plaintiffs' Exhibit 19-C was received in evidence)

THE COURT: Would you tell us what it is, Mr. Fried?

MR. FRIED: 19-C, your Honor, is a report of the certified public accountants on the stationery of Arthur Young & Company, and it is addressed to the board of directors of Blair & Co., Inc. The date is December 5, 1969.

THE COURT: I take it it is a report about

which Mr. Vanderbilt was just questions in the deposition.

MR. FRIED: He was questioned about that. And there are other questions regarding it.

(Reading)

"Q Would you please look at that Exhibit 3" -- which is now 19-C in this case -- "Mr. Vanderbilt, and just tell me whether you recall having seen that document or one like it prior to today.

"A Well, I'm sure I saw this. It is a report from Arthur Young and all of the board of directors received copies of these. So obviously I did."

There was then marked in evidence Exhibit No. 4, which we have marked for identification as 19-D, and it is captioned "Report of Certified Public Accountants" on Arthur Young & Company stationery, addressed to the board of directors of Blair & Company, and also dated December 5, 1969, which I now offer in evidence.

MR. BROOKS: No objection

THE COURT: Received in evidence.

(Plaintiffs' Exhibit 19-D was received in evidence)

THE COURT: Mr. Loflin, I am assuming that if you do not ask to see the exhibits, it is satisfactory to you.

MR. LOFLIN: I have copies of these, your Honor. I will object for the record if I have any objection.

THE COURT: Thank you.

MR. FRIED: (Reading)

"Q I show this report to you, Mr. Vanderbilt, and ask you whether there is anything in that exhibit -- first, I ask you whether you recall having received it at or about the time it was prepared and disseminated -- take out disseminated -- at or about the time it was prepared?

"A I don't recall specifically, but I assume that as a member of the board of directors I would see this report, since it is standard operating procedure, obviously, to give each director a copy.

"Q Upon receipt of such a report did you read it?

"A I would assume so.

"Q Now, would you please tell me whether there is anything in Exhibit 4 which is before you now that would alert you to the problems of unlocated securities?

"Do you need time to review that exhibit?"

THE COURT: That is Exhibit 19-D?

MR. FRIED: 19-D in this case.

THE COURT: I would suggest that you use the exhibit numbers that we have in the trial.

MR. FRIED: Yes, your Honor. (Reading)

"A Well, in answer to your question, not being an accountant, or not having been brought up in the securities industries, a report like this I would not dare to assume to be able to interpret it, and all I can say is that with all of these various numbers and reports it doesn't mean much to me.

"I believe your question was did I or could I tell from that report that there were problems in the back office. Is that your question?

"Q Well, you can answer that one first.

"A That report conveys nothing to me.

"Q Does it convey to you any problem with respect to the location of securities that Blair should have had on hand but could not locate ?

"A No. I see in one page there there is quite a dollar volume of securities long and securities short, but technically that doesn't mean anything to me.

"Q Where is that? Could you show me that page?

"A And I would in every case defer to our operating people as to whether this is a healthy report or an unhealthy one.

"Page -- there is no page number.

"Q Just point to it and we will have it marked.

"A There are a lot of big numbers, and you see right over there --

"Q You are referring to the page that has Items 7, 8, 10 and 11 on it; is that correct, in the left-hand margin?

"A Right."

These pages are not numbered, your Honor. 7, 8, 9,10 physically would be the fifty page of Exhibit 19-D.

THE COURT: Thank you.

MR. FRIED: (Reading)

"Q Which numbers in particular are you making reference to?

"A Long and short positions (indicating)

"Q That would be alongside of Item 10, which is Trading and Investment Accounts of Respondent; is that correct?

"A Right.

"Q Do those numbers have any meaning to you?

"A Well, they are pretty big numbers, but I don't know what they mean.

"Q The biggest of those numbers is 2,690,300;

is that correct?

"A That is correct."

We then marked as an Exhibit No. 5, which is marked in this case 19-E. It is a report, again on the stationery of Arthur Young & Company, addressed to the board of directors of Blair & Co., and it also is dated December 5, 1969.

I offer it in evidence.

MR. BROOKS: No objection.

THE COURT: Thank you. Received.

(Plaintiffs' Exhibit 19-E was received in evidence)

MR. FRIED: (Reading)

Q Do you recall having Exhibit 19-E at or near the time of its date?

"A No, I don't recall, but I assume as a member of the board of directors I received copies of this.

"Q Is there anything in Exhibit 19-E that would alert you to the back office problems of Blair & Co., Inc.?

"A In answer to your question I would say yes, from reading this first page in which Arthur Young says:

"'Comments: Relative to inadequacies in the accounting system the internal accounting control and procedures for safeguarding securities are set forth in

Certified Public Accounts' supplementary report.'

"Q Is there anything else in that report that would alert you to back office problems at Blair & Co., Inc., for the period reported?

"A Okay. What is the question?

(Question read)

"A I would say yes, that there are other items here which would indicate or make me question the financial condition or position of Blair at this point in time.

"Q Which items are you referring to?

"A Well,again, there are no pages here. If you want to stand up and look over my shoulder here, I can show you what I am talking about.

"Item 1, the item here, 'failed to receive shortage,' again, not being familiar with the technicality of running a securities firm, I would get $3 million -- this is in excess of $3 million, and this item would be something to be concerned about.

"Q That is Item 6 or Question 6(g); is that correct?

"A Yes, failed to receive.

"Q Yes. Any other items?

"A On the page headed Answers to Financial Questionnaire, Part I, Question: --

"Q 16?

"A --16(c) indicates that Blair must have been losing money because they are referring here to a net operating loss carryforward.

"On the following page Note 2 refers to unreconciled positions, both on the long side and on the short side which approximately equal each other in the amount of $2,400,000.

"And then on the following page Note 5 indicates New York Stock Exchange approval of Blair's plan for obtaining additional capital.

"Q Having read Exhibit 19-E, does it help refresh your recollection that you were aware of those items that you just referred to at the time you met with the representatives of the New York Stock Exchange and the SEC?

"A That was the reason we met with the New York Stock Exchange and the SEC.

"Q Is that your specific recollection?

"A Yes.

"Q That this report was the reason?

"A I don't know that was the reason. It was among the reasons, obviously.

"Q Prior to the meeting with the representatives of the New York Stock Exchange, do you recall meeting

subordinated lenders of Blair & Co., Inc.?

"A Darn right.

"Q Do you recall that?

"A Yes.

"Q Can you tell me the circumstances that gave rise to that meeting?

"A Mr. Ramsey, who at that point was, I believe, president of Blair, being a prudent businessman and wanting to furnish all investors in Blair with all available information, good or bad, when the tip of this iceberg appeared, he very quickly called a meeting and invited all the subordinated lenders to the meeting, and he laid on the table for them his concerns about the financial condition of Blair.

"Q Can you recall what he said?

"A Not specifically, no.

"Q Can you recall generally?

"A Generally, yes. He said he was very concerned about the financial condition of Blair, and he wanted them to know because it was his policy not to withhold any valuable information, good or bad, from anybody connected with Blair, and I believe he indicated that he had scheduled a meeting with the SEC at which the New York Stock Exchange participated.

"Q Did he specifically make the statement that he wanted to tell all that was good and bad?

"A That was the gist of the meeting. This was his business philosophy, to which I certainly -- I certainly supported that position.

"Q Aside from the financial difficulty, did he talk about the recordkeeping difficulties?

"A I don't recall.

"Q Do you recall whether he made a statement that the books and records of Blair & Co., Inc., were out of control?

"A I don't recall.

"Q Did he make a request for additional investments from the subordinated lenders that day?

"A I don't recall.

"Q Did he make reference to the Arthur Young report?

"A I don't recall.

"Q Was the Arthur Young report present at that meeting?

"Q Do you recall whether Mr. Ramsey read from the Arthur Young report at all?

"A I don't recall. It is a long time ago.

"Q And he apprised the assembled people that

there was a meeting shortly with the representatives of the Stock Exchange; is that correct?

"A I believe he did."

The next exhibit, your Honor, is the same as Exhibit 2, which has already been marked, and I don't see any point in having a duplicate.

May I just state that at this point in the deposition the financial report, which was dated as of September 26th, had already been marked, and the printed brochure is now a part of this case as Exhibit 2.

"Q Do you recall whether that report marked as Plaintiffs' Exhibit 2 was prepared and disseminated after the receipt of the reports from Arthur Young marked as Exhibits 19-C, D and E?

"A Were those the audited figures?

"Q Yes.

"A Well, obviously, this report, which is a financial report as of September 26th, had to be issued after Arthur Young's report, because this is the audited statement of financial condition, and that was dated December 5th.

"Q Now, is there anything in Plaintiffs' Exhibit No. 2, Mr. Vanderbilt, that would alert you to the back office problems of Blair & Co., Inc., that you pointed out

to us in Exhibits 19-C, D and E?

"A Problems specifically with respect to the back office? No, there is nothing here that would indicate to me.

"Q Mr. Vanderbilt, did the New York Stock Exchange approve the form, content and dissemination of this report?"

MR. BROOKS: There was an objection to the form at that point.

Your Honor, I will withdraw my objection.

THE COURT: All right. Thank you.

MR. FRIED: There is no answer there either.

I'll withdraw the question.

MR. BROOKS: Your Honor, there is an answer, line 6, page 69.

MR. FRIED: (Reading)

"A I don't know whether that is normal procedure or not. I would have no way of knowing.

"Q I ask you to read the first paragraph of Note 3.

"A Yes. What about it?

"Q Do you know to whom the $1,400,000 repayment was made that is referred to in that note?

"A Part of it might have been paid to me on the repayment of the loan made earlier in 1969.

"Q Do you recall which part?

"A Which part?

"Q How much?

"A No, I don't recall specifically. The loan was repaid from time to time through the course of the year.

"Q Do you know whether or not the New York Stock Exchange had approved of the payment?

"A Well, I know they approved of it."

MR. BROOKS: I object. I think the answer is hearsay.

THE COURT: Sustained.

The jury will disregard Mr. Vanderbilt's statement that he knew they approved of it.

MR. FRIED: (Reading)

"Q How did you become aware of it?

"A What?

"Q How did you know?"

MR. BROOKS: I object.

THE COURT: I will allow him to say how he knew, and let's see whether it is competent or meaningful or not.

Go ahead.

MR. FRIED: (Reading)

"A Because I recall that a little ahead of that time Mr. Ramsey had asked the New York Stock Exchange about his paying money out of Blair, and I know he was advised that when a loan such as this and others came due, Blair was obligated to repay those loans."

THE COURT: Is there further discussion on this point in the deposition?

MR. FRIED: I am sorry, I didn't hear that.

THE COURT: Is there further questioning on this point in the deposition?

MR. FRIED: Just another question and answer.

THE COURT: Well, read that.

"Q Does that answer the question that the New York Stock Exchange approval had been obtained?

"A Well, all they said to him is" --

THE COURT: Don't read that. I will have to advise the jury that Mr. Vanderbilt wasn't in a position to tell what the Stock Exchange said to Mr. Ramsey, unless he was present at the time which he was not. I don't think you could assume he was present unless he said he was.

All right, do you want to proceed.

MR. FRIED: Page 73. (Reading)

"Q Getting back now to the meeting with the representatives of the New York Stock Exchange in January 1970 --

"A That was a meeting with the SEC. The one I recall was with the SEC.

"Q Were members of the New York Stock Exchange present?

"A Yes. I have already said that.

"Q All right.

"What did the representatives of the SEC and the New York Stock Exchange say to you after you told them about the problems?

"A They said, 'Hang in there and keep us advised, and we'll give you all the support necessary and keep digging.'

"Q By the way, were there ever any restrictions placed upon Schwabacher's operations by the New York or American Stock Exchanges?

"A Well, I believe there were restrictions, yes.

"Q What were they?

"A I don't know for sure. Probably in the company not hiring new salesmen, not seeking new business, limiting advertising.

"Q Were those instructions operative at the time of the merger?

"A I believe they were.

"Q Do you recall when they were placed?

"A No.

"Q Were they imposed prior to the merger?

"A Yes.

"Q Were they in existence in January of 1970?

"A I would doubt it.

"Q Did there come a time, Mr. Vanderbilt, when Blair & Co., Inc., liquidated its subordinated securities?

"A Yes.

"Q Will you explain what that means?

"A That means any collateral for such subordinated loans was turned into cash by selling the marketable securities."

MR. FRIED: May I have a moment, your Honor.

(Pause)

MR. FRIED: Page 76 (reading).

"Q Was there any time prior to April 3, 1970 when you can recall the New York Stock Exchange making a request of Blair & Co., Inc., to go out and raise more capital?

"A I don't recall any such thing.

"Q Did there come a time, Mr. Vanderbilt, when Blair & Co., Inc., liquidated its subordinated securities?

"A Yes."

MR. FRIED: I read the next question and answer.

"Q So that a subordinated lender would normally put up securities owned by him with the member firm, is that correct?

"A Right.

"Q That would be in lieu of a cash payment?

"A Right.

"Q How would that afford the member firm capital, the act of placing securities with the member firm?

"A Well, you would use the securities to borrow money, using the security as collateral.

"Q Would the full face value of the securities be reconciled as good capital?

"A Not necessarily.

"Q For net capital computations?

"A Not necessarily.

"Q What would be done to arrive at a net capital figure with respect to the subordinated securities?

"A This was all done in accordance with the formula set up by the New York Stock Exchange.

"Q Is there a word that is commonly used?

"A Yes.

"Q What is that?

"A Haircut, I believe.

"Q And the haircut would be the percentage reduction of the market value of the securities, is that correct?

"A Correct.

"Q Was it considered a serious step to liquidate a subordinated security?"

MR. BROOKS: Objection to the form of the question at the point in the transcript, your Honor.

THE COURT: Overruled.

"A It was considered a very distasteful step.

"Q Why?

A "Because it is indicated that the additional value achieved their liquidation was necessary to keep the firm in compliance.

"Q And was it considered serious as far as the person who put up the subordinated securities?

MR. FRIED: There was no answer to that.

"Q Forgetting any individual's state of mind, was it considered in the industry, the securities industry, as detrimental to liquidate one's subordinated securities?"

MR. BROOKS: Objection to form.

THE COURT: Overruled.

"A Detrimental to what?

"Q Detrimental to the investor.

"A I would say the answer is yes."

MR. FRIED: Page 85 (reading).

"Q Now, was it important for Blair to obtain those funds from the Foleys and Mrs. Salisbury?

"A I would assume it was important to Blair.

"Q Why?

"A Because additional capital would have put Blair, obviously, and any other firm in a more comfortable position.

"Q Is it fair to say that you as chairman of the board of Blair & Co., Inc., in the early part of 1970, would have preferred to see the subordinated securities not liquidated?

"A Of course.

"Q I show you a letter dated February 26, 1970, from James B. Ramsey, Jr., to Fred Stock of the New York Stock Exchange."

MR. FRIED: The letter has been marked for identification as 19-G. It is on the letterhead of Blair & Co., Inc., dated February 26, 1970, addressed to Mr. Fred J. Stock, Vice-President of the New York Stock Exchange, signed by James B. Ramsey, Jr., which I now offer in evidence.

MR. BROOKS: Your Honor, as far as I can see from the transcript, there is no foundation for this exhibit to come into evidence. The witness was asked if he had seen it before and said he didn't recall. He was asked whether anyone reported receiving it, and he said

he didn't recall.

THE COURT: Do you wish to comment on that, Mr. Fried?

MR. FRIED: Well, there were other questions asked about the letter, your Honor.

THE COURT: Well, let's proceed with the testimony.

MR. FRIED: I will withhold offering it at this time, and I ask that it be marked for identification as Exhibit 19-G, or considered so marked.

"A Okay. What's the question.

"Q Did you see that letter at or about the date that appears on the exhibit?

"A I don't recall.

"Q Did anybody report to you that such a letter was sent to the New York Stock Exchange?

"A I don't recall.

"Q Part of this letter reads:

"'Oliver" --

MR. BROOKS: Your Honor, I am afraid I will have to object to that.

THE COURT: You cannot read the letter unless the letter is in evidence. Will you refer me to any portions of the evidence which you think support its

admission -- or the answers.

Mr. Turetsky is drawing my attention to page 87, line 13.

No, I do not think that helps. It is an indication of some information from the letter and asks the witness if it refreshes his recollection, and he said, "I would guess he probably did."

Is that the only --

MR. FRIED: I will leave that exhibit, then, for identification, and we will have proof later on.

THE COURT: All right.

There was then offered in evidence another letter, dated February 19, 1970, shown to the witness. We have marked it as Plaintiffs' Exhibit 19-H for identification in this proceeding, and ask if there is any objection to that. If there is, I will defer --

MR. BROOKS: Objection on the same grounds, your Honor. The witness was asked if he recalled having seen it before, and he said he didn't recall.

THE COURT: Well, if that is all he says, I would agree.

MR. FRIED: Page 88 (reading).

"Q Were you made aware that the Stock Exchange was considering imposing restrictions upon Blair & Co., Inc.

if Blair & Co., Inc. didn't improve its capital position?

"A I would assume so.

"Q They knew about that?

"A I would assume so.

"Q Did you participate in efforts to improve the capital position of Blair & Co., Inc., upon learning of that information?

"A I don't recall that I did.

"Q Did anybody report to you on such efforts?

"A I am sure I was aware of efforts being made to correct that situation.

"Q What efforts were you aware of?

"A I was aware, for example, of discussions with Foley, et al.

"Q Any others?

"A Well, at some point in time I was aware obviously of Ireland and others. I don't recollect any others.

"Q Was Ireland before or after February 1970?

"A I don't know.

"Q Were those the only efforts you are presently aware of?

"A All I can recall."

MR. FRIED: I now offer in evidence another

exhibit, your Honor, which was marked Exhibit 9, and in this proceeding we have marked it Exhibit 19-I for identification. I assume that Mr. Brooks will have the same objection.

THE COURT: It all depends on what Mr. Vanderbilt said, I suppose.

MR. BROOKS: This is the March 10th letter.

MR. FRIED: This is the March 10th letter.

MR. BROOKS: It is in evidence in this proceeding.

MR. FRIED: I am sorry.

THE COURT: Yes, it is.

MR. FRIED: The exhibit we have marked 19-I for identification, is the same as the March 10th letter, which is already in evidence in this proceeding as --

THE COURT: Well, the jury and Court are aware of the fact that it is in evidence already.

MR. BROOKS: Plaintiffs' 15.

MR. FRIED: (Reading)

"Q Did you see Plaintiffs' Exhibit 15 at or about the date that appears in the upper right-hand corner or on the front page?

"A Did I see that specific letter?

"Q Or a copy of it?

"A I don't recall."

MR. FRIED: The next exhibit is No. 10.

Again, the witness says he doesn't recall seeing it. We will offer proof later on, your Honor, regarding Exhibit 19-J for identification.

THE COURT: All right. What is its date?

MR. FRIED: It's dated April 19, 1970, on the letterhead of the New York Stock Exchange, addressed to Mr. Benjamin H. Hepburn of Blair & Co., Inc.

"Q Are you aware of any of the figures mentioned in that paragraph at that time?"

MR. BROOKS: Your Honor, I think that since that testimony refers to an immediately prior proceeding of the exhibit, which Mr. Fried has conceded he didn't have a basis to go into evidence on the deposition it is improper to refer to the figures.

THE COURT: I don't think so. The next question Mr. Fried asked is, "Were you acquainted with the figures?"

You could be independently acquainted with the figures without having seen the letter. I am not sure the original questioner had that in mind.

MR. FRIED: He said that.

THE COURT: Right.

MR. FRIED: (Reading)

"A First of all, Mr. Bishop didn't write this.

"Q Who wrote that?

"A Didn't Deignan or somebody write that? Oh, no, it was Bishop. My mistake. I had to be aware of capital deficiencies in Blair & Co.

"Q The next paragraph reads: 'We know that for some time you have been making efforts to improve the capital position of your firm, but you will realize, I am sure" --

MR. BROKS: Your Honor, counsel is now reading the letter.

THE COURT: Yes. That is impermissible, Mr. Fried, until the letter is in evidence.

MR. FRIED: Your Honor, he said he knew about this.

THE COURT: No, he said he didn't.

MR. FRIED: You have to look at the answer. After the next --

THE COURT: Let me see the answer.

All right, in the circumstances, you may read it.

MR. FRIED: (Reading)

"Q The next paragraph reads:

"'We know that for some time you have been

making efforts to improve the capital position of your firm, but you will realize, I am sure, that we cannot permit your firm to continue in violation of Rule 325. Accordingly, we must insist that immediate steps be taken to insure that Blair & Co., Inc., is in compliance with Rule 325 by the close of business on Friday, April 3, 1970. It would appear to us that the most logical way to accomplish this to liquidate the collateral behind the secured demand notes of members and allied members of your firm.'"

"Were you aware of this position that the New York Stock Exchange had taken?

"A Obviously, yes.

"Q And the liquidation of the collateral beind the secured demand notes was the liquidation of the subordinated loan that we have previously discussed, is that correct?

"A Right.

"Q Now, the next paragraph reads:

"'We understand that as an alternative'" --

MR. BROOKS: I object to that, your Honor. You don't need that paragraph to answer the next question.

THE COURT: Let me see it.

Overruled. I think the jury is entitled to

have some understanding of how this flows.

"Q Now, the next paragraph reads:

"'We understand that as an alternative you are endeavoring to expedite completion of the Foley borrowing to the extent of $2 million on capital value. We must point out that such borrowing can only be considered as good capital by Fried if proper documentation is in our hands on or before that date.'

"Did you understand that if Foley and Salisbury subordinated their capital by Friday, April 3, 1970, the liquidation of the subordinated loans could be avoided?

"A I don't recall.

"Q The next to the last paragraph of this letter reads:

"'We have no objection to your proceeding as indicated in the previous paragraph, with the distinct understanding, however, that if your plans have not materialized by Friday, we shall expect the securities behind secured demand notes of members and allied members of your firm to be liquidated on that day in such quantity to bring your firm's capital position into conformance with Rule 325.'

"Now, with that in mind, Mr. Vanderbilt,

and with my informing you that Foley and Salisbury subordination took place on April 3, 1970, will you tell me why a liquidation of subordinated loans took place within a few days thereafter?

"A I don't recall the reason for that.

"Q Where were you on April 3, 1970, do you recall?

"A I don't recall.

"Q Do you recall being present at the closing of the Foley-Salisbury subordination?

"A I don't recall whether I was there or not.

"Q Do you recall being contacted during the closing?

"A I don't recall that, either.

"Q Do you recall any events that led up to the liquidation of the subordinated loans?

"A Not specifically.

"Q Do you recall subsequently?

"A Oh, yes. It was a matter of serious concern having to liquidate our subordinated noteholders' collateral. Therefore, it had to be a discussion of primary concern to us all.

"Q Is it fair to say that such a decision wouldn't have been made without your being aware of it?

of it?

"A That's correct.

"Q Do you recall being present when the decision was made to liquidate the subordinated loans or collateral behind the subordinated loans?

"A I am quite sure I was present.

"Q Were you surprised that such a step had to be taken even with the infusion of the Foley-Salisbury subordination?

"A I don't recall what my sentiments were at that time.

"Q Did you inform anybody that such a step was about to be taken?

"A I don't recall.

"Q Was that step of liquidating the subordinated loans collateral mandated by the New York Stock Exchange?

"A I would assume so.

"Q Is that your best recollection today?

"A I believe so, yes."

MR FRIED: Your Honor, may we have a short recess now?

THE COURT: All right. We will take a short recess.

(Recess)

MR. FRIED: (Reading)

"Q Do you have any present recollection of the amount of loss sustained by Blair & Co., Inc. for 1969?

A No.

Q If I mentioned to you that there was a loss of approximately $9 million, would that help refresh your recollection?

"A No. That goes too far back in time. I don't recall what the loss was.

"Q Would such a number surprise you today?

"A A number that big would surprise me, and anybody else, I would assume.

"Q Would you say today that such a loss of that size was possible at Blair for that year?

"A I have no opinion.

"Q Do you recall the largest loss incurred in any single month between June 1969 and the date, let's say, of July 1970?

"A No.

"Q Do you recall whether Blair sustained a loss in any of those months in excess of $1 million?

"A No, I don't recall.

"Q If you recall Exhibit 19-E, you referred to Question 16-C of the Answer to Financial Questionnaire,

Part I, which read:

"'In the opinion of respondent's management available net operating losses are offset adjustments to prior years' federal income taxes proposed by the Internal Revenue Service. In addition, a portion of net operating losses will be available as a carryover to future taxable years.'

"Were you then aware of an Internal Revenue ruling with respect to an audit performed by the IRS at Blair & Co., Inc.?

"A What is the question again?"

MR. FRIED: The question was reread, on page 103.

"A Not that I recall. I really don't know what the question is, rephrase it.'

"Q Had anybody informed you that the Internal Revenue had performed an audit of Blair & Co., Inc.'s prior tax year at any time prior to 1969?

"A I don't recall.

"Q Did anybody inform you that there was a deficiency ruled by the Internal Revenue Service with respect to Blair & Company's prior tax return deficiency?

"A I don't recall.

"Q In reading Question 16-C, oar the answer thereto in Exhibit 19-E, are you now aware of what this answer makes reference to?

"A 16 what

"Q C.

"A I don't recall. This is all news to me. I don't know what the Internal Revenue Service proposal is all about. Obviously operating losses you can carry back, and you can carry them forward, so --

"Q You testified that you read Exhibit 19-E at the time it was disseminated to the board of directors, is that correct?

"A I would assume so.

"Q I would assume that you read the portion that we just made reference to, is that correct?

"A I would assume so.

"Q Did you inquire of anybody as to the meaning of that particular answer?

"A Not that I recall.

"Q Do you recall any discussion at a board meeting of an IRS ruling concerning previously filed tax returns for Blair & Co., Inc.?

"A I don't recall."

Page 119:

"Q Is it your recollection you first became aware of those matters within a few days of the time that Mr. Ramsey called a meeting of the subordinated lenders in January of 1970?

"A I would assume that we had access to these reports prior to the meeting of subordinated lenders.

"Q How much prior?

"A I don't know when the meeting was.

"Q Did you consider that information of an urgent nature?

"A What is the difference between 'urgent' and 'very important'?

"Q Did you consider it of such importance that the future of the firm was at stake?

"A I would assume that it was of sufficient importance that corrective action should be taken.

"Q And what did you think would happen if such corrective action wasn't taken?

"A Well, obviously, if you have a problem and you don't take corrective action, you will assume the problem will grow bigger and bigger until it is no longer solvable, so to speak.

"Q In any event, you considered it of sufficient importance to bring it to the attention of the New York Stock Exchange and SEC, is that correct?

"A Right."

Then there was marked in evidence a copy of a memorandum dated January 16th, which has been marked for identification in this case as 19-M. It is a memorandum signed by J.J.D.

MR. BROOKS: We object to this being offered on the basis of a foundation in this deposition, your Honor, because the witness was never even asked if he recognized or could identify the document.

THE COURT: There is no foundation for it to be admitted at this stage.

MR. FRIED: If your Honor will look at the next few questions, you will see he was questioned about the very document.

THE COURT: Where do the questions begin?

Is that Exhibit 13?

MR. FRIED: Page 127, your Honor. Exhibit 13, right.

(Pause)

THE COURT: I don't think there is anything in there that indicates that the witness had any knowledge of the document. The questioner apparently simply arbitrarily used it as a basis for asking questions to the witness.

You can ask those questions, but I don't think you can read from the exhibit at this stage in the game.

MR. FRIED: All right. (Reading)

"Q Did you ever view Exhibit 19-M for identification?

"A Right.

"Q Were you under the assumption that Messrs. Rush and Saks were reporting accurately to the New York Stock Exchange concerning the conversion to the Midwest System?

"A I would have assumed that they would report accurately to the New York Stock Exchange.

"Q Did the New York Stock Exchange ever contact you and tell you that they thought they were receiving misinformation?

"A No.

"Q I would like to read a paragraph from Exhibit 13."

MR. BROOKS: Objection.

THE COURT: You cannot read that paragraph, but you can ask the question that follows.

MR. FRIED: All right. (Reading)

"Q Had you ever heard any complaint from the New York Stock Exchange that Messrs. Rush and Saks had so reported inaccurately?

"A No.

"Q Who is George Saks?

"A He was in charge of compliance, I believe.

"Q At Blair?

"A At Blair. Who is JJD, incidentally?

"Q I would think it is Mr. Deignan.

"A Okay."

Then there was marked for identification Exhibit 14, which is Exhibit 19-N for identification in this proceeding.

I ask that that be received in evidence at this time.

MR. BROOKS: Your Honor, looking ahead in the transcript, it appears that the witness was asked whether

he had seen Exhibit 14 prior to today and the witness replied, "No, I don't recall."

If there is a further foundation somewhere else, I would consider it. But on the basis of that foundation I object to the admission of the document.

THE COURT: I will have to rule that way, Mr. Fried.

MR. FRIED: It will have to remain, then, Exhibit 19-N for identification.

MR. BROOKS: I believe this should be a two-page document, if we are marking it for identification. I think even if it is marked for identification, the second page should be added.

THE COURT: Mr. Fried can mark whatever he wants. But if he comes to put it in evidence, you can object to it on the ground it is not complete.

MR. FRIED: (Reading)

"Q Mr. Vanderbilt, do you recall having seen the information on this Exhibit 19-N for identification prior to today?

"A No, I don't recall.

"Q Were you aware of a supplemental report issued by Arthur Young with respect to the September 26, 1969 statement?

"A I don't recall being aware of any such report.

"Q -- of answer to financial questionnaire?

"I would like to read it."

MR. BROOKS: Objection.

THE COURT: Are you reading from the proposed exhibit?

MR. FRIED: No, your Honor. He is reading from the financial questionnaire.

THE COURT: Is that in evidence yet, the financial questionnaire?

MR. BROOKS: It appears to be a passage from the second paragraph of 19-N.

MR. FRIED: I agreed with that, your Honor. I think the examiner at that time designated the wrong thing at the time.

What he was talking about was this particular document (indicating).

THE COURT: All right.

MR. FRIED: Your Honor, instead of reading what was in there, I want to establish that he had no knowledge, although he was chairman of the board, of the importance of these questions. So may I at least have the answer read?

THE COURT: Of course.

MR. FRIED: (Reading)

"Q I would like to read."

Then there was something read.

THE COURT: A portion of 19-N, is that it?

MR. FRIED: Yes.

"Q Do you recall any discussion concerning such an opinion?

"A I don't recall specifically.

"Q When Exhibit 2 was being compiled or prepared for dissemination to the customers of Blair & Co., Inc., was there any discussion concerning the possibility of including such information in that report?

"A I don't know when that report was prepared and submitted.

"Q Well, this report is as of September 26, 1969. I am talking about Exhibit 2. Is that correct?

"A Right. When was it sent out?

"Q I am asking you. Do you know? I wasn't chairman of the board of directors --

"A I have no idea. I don't know.

"Q -- at the time.

"A I don't know. I can't keep my mind filled up with a lot of things like this going back six years ago.

"Q I am asking whether you have a present recollection

of having discussed the propriety of including information inthe report marked as Plaintiffs' Exhibit 2 of the nature that is contained in Exhibit 19-N for identification.

"A Well, maybe this information wasn't available.

Q "If it had been available, would you have included it?"

MR. BROOKS: I object, your Honor, to the question, hypothetical.

THE COURT: Sustained.

MR. FRIED: (Reading)

"Q Mr. Vanderbilt, in the deposition taken of you in the Foley v. Vanderbilt action on September 19, 1972, the following question was asked of you:

'Q When did you first learn that there were large amounts of securities missing with respect to Blair's surplus?'

"And you answered: 'Whenever the answers to the questionnaire were completed and submitted to the board of directors, whenever that was.

'Q That would be September 5, 1969?

'A Okay.

"Q Is this an accurate statement?

"A Who made the statement that it was December 5th?

"Q Let's stick with this portion of it.

Was it upon your receipt of the answers to financial questionnaire you did first learn of the unlocated securities?

"A What is the question again?

"Q Did you first learn of the unlocated securities when you first saw the answers to the financial questionnaire for the period as of September 26, 1969?

"A I don't recall when I first became aware of unlocated securities or how.

"Q Do you know who became aware of it before the answers to the financial questionnaire were prepared?

"A I don't know.

"Q But you received answers to the financial questionnaire, is that correct?

"A I would assume so, sure.

"Q And you read it?

"A I would assume so.

"Q And having read it, did you become aware of it through that mechanism?

"A As I previously said, I don't recall whether I knew or suspected or was advised of unlocated securities before this report or whether that was the first time I knew about it.

"Q Would it be any later than the receipt of that

report?

"A I would doubt it, since that referred specifically, I believe, to unlocated securities.

"Q So that it was before or at the time that you received that report, is that correct?

"A I would assume so.

"Q Do you recall any discussion at the board meeting of Blair & Co., Inc., as to whether or not the information concerning the unlocated securities should be included in the financial report issued to the customers of Blair & Co., Inc.?

"A I don't recall. I think it would have all come down to how serious a problem this was.

"Q Did you investigate into the severity of the problem?

"A I'm sure we did.

"Q Did anybody report to you of such severity?

"A I would assume that somebody was directed to investigate the severity of the claim and report back.

"Q Of what claim?

"A That there were a lot of unlocated securities.

"Q Did you believe that to be a claim at the time or a finding?

"A A finding.

"Q Do you recall the scope or the size in dollars of the amount of unlocated securities?

"A No.

"Q Was it over $2 million?

"A It could have been. I don't recall.

"Q Do you remember how many transactions were involved or how many different securities?

"A No, I don't recall.

"Q Do you recall whether you received a report on how many different securities were involved?

"A Oh, I'm sure such report was made available, such information, that is.

"Q Do you recall having reviewed it?

"A I would assume I did. If the red flag had been raised that this might be a problem area, obviously you reviewed it and tried to determine the severity of the situation.

"Q Do you recall what you concluded concerning that particular situation?

"A I don't recall."

Page 138.

"Q Were you aware that Arthur Young had tried to resolve these problems of unlocated securities from the beginning of the audit work performed by it and that as

of the report date, December 5, 1869, it could not resolve those differences on the missing securities?

"A I don't know what efforts they made to resolve them. Obviously they were aware of the fact that therewere missing securities.

"Q I would like to again read from a prior deposition in the Foley against Vanderbilt case and I will repeat to some degree. It starts at the bottom of page 84, line 20.

'Q Did you know, as of September 26, 1969, that there were a substantial amounts of unlocated securities in Blair?'"

Then Mr. Tomajan said: "You mean on the date or on or about that date?

"Mr. Milberg: On or about that date.

'A I gather that at that date that we were aware of that fact.

'Q When did you first learn that there were large amounts of securities missing with respect to Blair?

'A Whenever the answers tc the questionnaire were completed and submitted to the board of directors, whenever that was.

'Q That would be December 5, 1969?

'A Okay.

'Q Is that correct?

'A I don't know.

'Q What is the date of that?

'A What date?

'Q Yes. On the report there is a date on there.

'A Okay. Then it is December 5th.

'Q December 5, 1969, Mr. Vanderbilt?

'A Right.

'Q So on December 5, 1969 you became aware that there was a large amount of unlocated securities involved, is that correct?

'A Yes.

'Q Did you follow the subject up after December 5, 1969 in any way?

'A We were customarily aware of the differences. Obviously, the entire back office was trying to locate the securities that were missing and the ownership of those that we had in our possession that we couldn't account for for the ownership of.

'Q Do you know what progress was made as far as locating these securities?

'A No.

'Q Did you consider it a important problem with respect to Blair's financial position and its continued

viability as a going entity?

'A Well, quite obviously.

"Q I have finished the line of questioning.

Is that an accurate recitation?

"A Yes.

"Q Of your present recollection? And you would so testify today, is that correct?

"A Yes. The only exception I would take is the date of receiving the Arthur Young report. If it is dated December 5th, we probably didn't receive it on December 5th.

"Q Mr. Vanderbilt, following the acquisition or merger between Blair and Schwabacher, did you come to the belief that the information given to you concerning Schwabacher prior to the merger was not accurate?

"A What information?

"Q The financial condition of books or records.

"A At what point in time?

"Q At any time subsequent to the merger.

"A Well, I do recall that they were not as strong financially as we had been led to believe. Now, at what point in time after the merger that developed, I can't say.

"Q Did you also come to the belief that the condition of the books or records at Schwabacher were worse than you had originally anticipated?

"A I believe that is a fair statement.

"Q Well, in the deposition taken of you in the Arneil case on November 3, 1973 the following question was asked:

'Q I'm asking you as a director, is it your present understanding that the board was fully informed concerning the acquisition of Blair? There is a series of colloquy between counsel, and then the question was rearticulated:

'Q Do you recall the first one, which was do you now have reason to believe that the board was fully informed in 1969?

'A Now I do not believe we had all of the facts at our disposal.

'Q As to the second question that your counsel posed, did you feel in 1969 that the board was fully apprised?

'A I definitely felt that they were.

'Q Mr. Vanderbilt, what facts did you base your answer on that you do not now believe that the board was fully informed in 1969?

'A Certain information came to light later on that I think might have influenced my thinking as to the terms and conditions of the merger and the necessary

safeguards that have to be put up. I don't recall specifically except that I believe we found out there was a little more chaos in the clearing operation, the Schwabacher operation, with Midwest Clearing System than we expected or anticipated.

"Do you adopt that answer to that question now?

"A Yes.

"Q Do you recall any information received by you concerning the efficiency of the Midwest System?

"A At what point in time?

"Q Let's say from the time you acquired Schwabacher until April 3, 1970.

"A Yes. What information, I don't know. But certain information was brought to light, because I know myself, and my opinion was shared with others, that there were a lot of problems with the Midwest System or as between Midwest and Schwabacher.

"Q Were there also problems with the Midwest System at the Blair division?

"A Oh, God, yes. It finally developed into a lot of problems.

"Q Why was the conversion made to the Midwest System when problems had been shown to exist in the

Schwabacher conversion to the Midwest System?

"A I think primarily an assurance from the Midwest group, who desparately needed Blair to go on to their system, particularly when you consider that if Blair didn't go on their system Schwabacher would have been taken off their system, and it would have been, in my opinion, the ruination of the Midwest Clearing Corp. at that point in time.

"So they made a concerted effort to sell us on the advisability, since we wanted to make a quick transfer, to go with them, and they promised to give us a task force of all the key skilled technicians and virtually guaranteed that we would have a smooth transition and this would be better than trying to convert Schwabacher back to a system foreign to what they were used to.

"Q Who told you that the Midwest System would be in dire straits if the Schwabacher account left?

"A The Midwest System did.

"Q Who at the Midwest System?

"A I don't know.

"Q Did they tell you directly?

"A We were in touch with the top echelon of the Midwest Clearing Corp. It was a very vital and important move as far as they were concerned."

MR. FRIED: Page 150 (reading)

"Q Were there problems before the conversion in the back office of the Blair Division?

"A No, I would lay 99 percent of the problem directly ot the attempt to the convert to the Midwest Clearing Corp.

"You have got to bear in mind that Blair was in a very enviable, healthy condition prior to the Schwabacher merger, and then, as I have already testified the problems of Schwabacher were greater than we had anticipated.

"Unfortunately, the volume of the market-place shriveled up, and we had to make our decision on consolidating under one system sooner than we had expected, and we chose the Midwest because of the lavish

promises made to us by the Midwest, none of which were fulfilled, and we can lay at the door of Midwest virtually all of the problems of Blair and Schwabacher.

"Q What problems at Schwabacher caused the greatest difficulties for Blair & Co., Inc.?

"A From a technical point of view and I can't answer that because I am no technical expert in this type of business.

"Q Well, you may have had some impression.

"A I am sure there were some back office problems and maybe some marketing problems. I just don't know.

"Q Didn't those problems cause a capital drain?

"A I don't think so necessarily. I think they were problems that existed more or less when we took over Schwabacher and they were problems that we continually felt we could correct. Maybe they were a little more deep, deep-seated than we had originally expected, but the problems created by Midwest on top of the problems we were trying to solve at Schwabacher made a very difficult job.

"Q What were the problems?

"A What?

"Q That you had at Schwabacher that you couldn't solve?

"A I don't know. I don't recall, but we have already agreed in testimony that it was well known that Schwabacher had some problems and that is why they were available to be acquired.

"Q Well, were the problems back office problems principally?

"A I don't know.

"Q You testified previously that the New York Stock Exchange strongly urged the merger.

"A Right."

MR. BROOKS: Your Honor, there was an objection to the form of the question. I think it was the same one we discussed before about characterizing the prior testimony as urged or encouraged.

THE COURT: Well, he has answered "Right" to the question. I think the jury understands the situation. We will leave it at that.

Go ahead, Mr. Fried.

MR. FRIED: (Reading)

"Q What was reported to you?

"A Yes.

"Q By whom?

"A I don't recall. Probably Jim Ramsey or Bill Lendman.

"Q Did they state why the New York Stock Exchange was suggesting this?

"A Well" --

MR. BROOKS: Objection, hearsay.

THE COURT: Sustained.

MR. FRIED: (Reading)

"Q Was there also a trust fund consideration?

"A A trust fund?

"Q If a member firm went under, wasn't there an exposure to the New York Stock Exchange or any fund established by it, a financial exposure, as a result of such failure?

"A Well, I think, as I recall, I don't know whether they had any fund like that to bail out firms that went under, but at least at that time I know that when a fund did go under" --

MR. BROOKS: Your Honor, I am going to object to further reading of the answer, because it is not responsive to the question.

THE COURT: Would you repeat the question or let me take a look at the question and the answer.

Overruled. I assume that the whole subject is going to be testified to by a number of people anyway.

It can't hurt.

MR. FRIED: (Reading)

"Q If a member firm went under, was there an exposure to the New York Stock Exchange or any fund provided by it, a financial exposure, as a result of any such failure?

"A Well, as I recall, I don't know whether they had any fund like that to bail out firms that went under, but at least at that time when a firm went under to protect customers of that firm they called on all existing member firms to ante up so much money so none of the member firms like to see another member firm go under, obviously.

"Q Because it would cost money?

"A Right.

"Q Is it fair to say that you personally relied primarily upon the representations of the Midwest Stock Exchange in agreeing to convert to that system?

"A Yes.

"Q And but for those representations and urgings, is it also fair to say that you were skeptical?

"A I don't know what my reactions were. I wasn't technically qualified to evaluate the strengths or deficiencies of the Midwest System. All I know is from hearsay that they had never made a smooth transition in

all their history and I expect that unenviable record exists today.

"Q And you were aware of that so-called history at that time; is that right?

"A Yes.

"Q Was that also the subject of discussion at the board of Blait?

"A Very definitely.

"Q That skepticism was expressed at the board level?

"A And it was expressed directly to the management of Midwest Clearing Corp., I think it is.

"Q Was such skepticism also discussed with Arthur Young?

"A I don't know.

"Q How about with the New York Stock Exchange?

"A I don't recall specifically, but I think probably it was the subject of discussion with the New York Stock Exchange.

"Q Is it fair to say that the conversion to the Midwest Stock Exchange system never got better?

"A It got progressively worse from start to finish."

MR. FRIED: There is a stipulation by counsel,

your Honor, to read in a portion of the testimony in some other case,the Arneil case. I don't know anything about it, but it is part of the record.

"Q Do you recall on or about January 15, 1970, a meeting at the Bankers Club here, where the problem of Blair was discussed?

"A Yes. I don't know what date.

"Q I said on or about January 15th of 1970.

"A January, probably. I would guess the latter part of the month.

"Q Who was present at that meeting?

"A I believe any and all subordinated noteholders or investors, let's say.

"Q And what was the topic of discussion?

"A That we had uncovered some alarming things resulting from the debacle on the conversion to the Midwest.

"Q Was there a course of action discussed?

"A I believe Jim Ramsey presided at that meeting very effectively, he withheld nothing from the group, told them that we were in a dangerous, maybe precarious position. He outlined everything that was being done to overcome the problems and that was that.

"His theory was bieng forewarned is being forearmed.

"Q The next day, did you go to the New York Stock Exchange and have a discussion or someplace with Mr. Leon Arning?

"A We went to the New York Stock Exchange and had a meeting with -- I am not sure if it was Lee Arning -- but it was one of the top officials and in attendance -- I don't recall all that were in attendance -- but I remember Jim Ramsey very wisely and effectively laid out before the group the problems in the Blair-Schwabacher combination and he saw them; and in effect he said, 'Gentlemen, we are telling you now, that we have some serious problems. We don't know the extent of them. What's your pleasure?'

"Q And what was the response by anyone from the Exchange?

"A As I recall, some concern but certainly an expressed willingness to cooperate and help out; and the parting words were 'Let's keep in touch, almost on a daily basis.'

"Q Was that the first conversation that you had with the Exchange?

"A The first one I had that I recall.

"Q Concerning the Schwabacher-Blair common problems?

"A Up to that time, it was just a matter of just

keeping in touch with them which the operating people did.

"Q Was any similar communication given to the American Stock Exchange or any other exchange?

"A Oh, I am sure that was the case.

"Q On what facts did you base that assuredness?

"A I remember a luncheon that the American Stock Exchange had for us, which could have been around about that time, in which they said, 'We recognize your problems. We're not here to be negative. We're part of this industry. We want to help you and any of the other firms, of which there are many bordering on serious problems. Keep in touch. Let us know what your problems are. We are willing to help you as best we can.'

"Q This is about the same period?

"A Yes.

"Q Do you recall who the individual were?

"A It was Saul and all of his henchmen at a luncheon at their executive dining room."

MR. FRIED: May I stop here, and see if Mr. Loflin will agree that Mr. Saul was at that time an officer of the American Stock Exchange.

MR. LOFLIN: Mr. Ralph Saul was president of the American Stock Exchange.

THE COURT: I think this is a good time to

recess. I will see counsel briefly in the robing room on an evidentiary matter that arose this morning.

You are excused until 2:00 o'clock, ladies and gentlemen.

(Jury left the courtroom)

THE COURT: Mr. Fried, I have reviewed a number of cases which my clerks have called to my attention in connection with the definition of a managing agent for that determining whether a deposition, and in particular, Mr. Deignan's deposition could be used in this case, and I have concluded that he does not within that definition.

If I understand the facts correctly, it does not seem to me that, from his own testimony, he had discretion in any way to bind the Exchange. He was third in line with regard to the subject matter, as I read his testimony. He of course had no identity of economic interest with the Stock Exchange. He is no longer employed by them, is that correct?

MR. BROOKS: He is retired, your Honor.

THE COURT: I do not know what the situation is with regard to his actual personal feelings as to the Stock Exchange, but even if he had friendly feelings to the Stock Exchange I don't think that his status would qualify him as a managing agent.

* * *

AFTERNOON SESSION

2.00 P. M.

(Jury present)

THE COURT: Mr. Fried?

MR. FRIED: Your Honor, I was reading from the portion of the deposition where counsel had agreed by stipulation that some other testimony be incorporated. I will continue.

THE COURT: All right.

MR. FRIED: 176.

THE COURT: Do you understand, ladies and gentlemen, this is still the deposition of Mr. Vanderbilt? All right.

MR. FRIED: (Reading)

"'Q Did Blair and the American continue to stay in contact?

"'A Well, yes. But primarily we were in contact with the New York Stock Exchange and the SEC. As a matter of fact, the SEC had a representative at this January meeting.

"'Q Mr. Vanderbilt, your deposition was taken in another matter,entitled Foley vs. Vanderbilt, apparently about the 19th day of September, 1972.

"'Had you reviewed that deposition?

"'A No.

"'Q With respect to who was present, would it refresh your recollection if I indicate to you that your testimony indicated a Mr. Stock was present?

"'A Yes, he was. He was a key guy in there.

"'Q Fred Stock is his name. I will address your attention to page 74 of your deposition and ask you to read over the testimony and tell me if that is an accurate reflection of what occurred at that meeting.

"'A This was -- I was confused as to who this meeting was with. Actually I got it straight in my mind. It was with the SEC at our request, and the New York Stock Exchange sent their representative to sit in.

"'Q Would that be Mr. Stock?

"'A We felt our problems were serious enough that we should report to the top governmental regulating agency.

"'Q Is your testimony as set forth on page 74 accurate in accordance with your present recollection?

"'MR. THOMAJAN: With respect to the attendees at the meeting?

"'Q First with respect to the attendees.

"'MR. THOMAJAN: Obviously, Mr. Vanderbilt's recollection was better in 1972 than it is at the end of 1975.

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"'Q I am interested in whether there is a difference.

"'A I would say that is pretty accurate.

"'Q In your testimony here you indicated,"We said." "We" refers to you and?

"'A Mr. Ramsey.

"'Q I believe the witness has indicated that Mr. Ramsey was speaking, and I am going to read the quote. I am going to ask you whether the substance of Mr. Ramsey's statement beginning at line 10 and a half of page 74, "Gentlemen, you raised these questions about Blair and its financial condition. We nor anybody else can accurately say what that condition is today. If you want us to close up shop, just tell us."

"'That is what Mr. Ramsey said?

"'A Right.

"'Q The next paragraph begins with a response. They said, "Can you identify for us who the speaker was?"

"'A I presume it was a representative of SEC who was conducting the meeting, whoever that was.

"'Q Do you recall if it was not Mr. Stock, for example?

"'A No. I think Stock just sat there and didn't open his mouth, as I remember.'"

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That is the end of that stipulated portion of the record.

THE COURT: All right.

MR. FRIED: (Reading)

"Q Now, you testified that you recall a luncheon that the American Stock Exchange had for Blair and people working for Blair in which they said that they recognized your problems. The problems that you referred to, were they the problems that gave rise as a result of the conversion to the Midwest System?

"A I would say as far as the American Stock Exchange and all outside are concerned, the problems were the result of the sudden rapidly shrinking volume on the Exchange's trading volume, which heard so many firms, forgetting any conversion, who had necessarily been geared up with large organizations to take care of a much heavier volume, and immediately after the volume decreased they were all being thrown into the red in a substantial way, and this, I think, was specifically the concern of the major exchanges.

"Q I understand that. But did you apprise the American Stock Exchange of the other problems that you were experiencing, including the capital problems?

"A I don't recall.

"Q You don't recall the discussions with them at

jg 5 "Vanderbilt

that meeting?

"A No. The purpose of their meeting was not to tell us what we should or shouldn't do. They just merely set it up to acquaint us with the services and facilities that they had available to help, when necessary, member firms, and they were saying, which was very pleasant to hear, 'We are here to serve our members, and if you need any help from us, just let us know and we will do all we can.'

"Q What types of help were they making reference to at the time?

"A I don't know. Maybe they wanted to hold our hands and tell us things weren't so bad. I don't know.

"Q Were you telling them that things were bad?

"A No. They relied -- they had a series of luncheons with other member firms who were being squeezed by the low volume and high overhead, and they, instead of standing up there as a negative enforcement agency, they were saying, 'We are here to help our members,' and that was the purpose of our meeting with them over luncheon, which was followed up, as I understand, with several other firms.

"Q Did they give you any indication of how they could help?

"A Oh, I guess they probably did, but I don't

recall specifically.

"Q Then these luncheons were for people or firms that were having problems?

"A Yes, and there were plenty of them at that point in time.

"Q Did they indicate to you that they knew you were having problems?

"A Wll, I don't think the lunch -- I don't think we would have been invited over there for lunch if they hadn't realized that we and many, many other firms were facing some problems at that time."

I believe that is the end of the direct portion.

"Q I would like to refer you to page 78 of your prior testimony in the Foley versus Vanderbilt action. This question was asked:

"'Q In any event, isn't it a fact that the investment by the Foley group will -- that the purpose of the investment by the Foley group was to cure the net capital deficit of Blair?

"'A The possible net capital deficiency, right.

"'Q All right. Well, do you know what the amount of net capital deficit was in February of 1970?

"'A I didn't say there was a net capital deficiency. If there was one, as to amounts I don't think anybody could

have told you.'

"Do you agree with that statement today?

"A Yes.

"Q That nobody knew what the net capital deficiency was or if there was one then?

"A That is correct.

"Q And did you tell that to the New York Stock Exchange?

"A I think they got the message loud and clear in our January meeting.

"Q Do you remember Mr. Ramsey so stating?

"A I remember him stating in a general way, 'We have got problems. We don't know the extent of the problems because our records are such that at this point in time we cannot tell the extent of those problems.'

"Q Was he talking about a records problem or was he talking about a financial problem?

"A Both.

"Q Do you recall a negotiation with Thomson & McKinnon in 1970?

"A Yes.

"Q Do you recall whether or not that negotiation was aborted?

"A Yes, it was.

"Q By whom?

"A By certain actions in the organization suggested by the New York Stock Exchange.

"Q Do you recall what they were?

"A Not specifically.

"Q Do you recall that the New York Stock Exchange --

"A No. It had to do with a meeting at which certain of our offices were put up for public auction, so to speak.

"Q What does that mean?

"A Inviting other member firms to come in and see which of our offices they would like to take over, and on what basis and for how much.

"Q Do you recall that the New York Stock Exchange was concerned about the impact on its trust fund if such a merger went through?"

MR. BROOKS: I object.

THE COURT: Before you answer that, let me see that.

(Pause)

The objection is sustained.

MR. FRIED: (Reading)

"Q I would like to read a portion of Mr. Ramsey's testimony given before the New York Stock Exchange on

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April 15, 1971:

"'Q Mr. Ramsey, in the previous discussion we discussed various avenues of acquiring additional capital for Blair & Co. Was any attempt made of considering a merger with Thomson & McKinnon?

"'A Yes. Thomson & McKinnon and Blair had reached a position that would have certainly helped to alleviate many of the difficulties of Blair. Well, not an outright merger in the beginning. It would have been a purchase of assets. Problems arose by thefact that we could not consummate such a deal unless we removed the two and a half million dollars from Blair & Co.'s SDN accounts'" --

May we agree at this point that SDN stands for subordinated debenture noteholders?

MR. BROOKS: No. It is my understanding it stands for secured demand note.

MR. FRIED: Secured demand note. I'm sorry. Secured demand note.

"' -- to transfer to Thomson & McKinnon. Otherwise the ratios would have been affected. Therefore, an examination was conducted by the Exchange to see if it were feasible to remove the two and a half million.

"'Q And?

"'A Some days later, as a result of the examination

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of the fund, I received a call around ten o'clock at night to say'" --

MR. BROOKS: I object to this testimony, your Honor. The reading is from testimony given by Mr. Ramsey --

THE COURT: Yes.

MR. BROOKS: -- which is unsworn testimony, which was not taken in this lawsuit or any other lawsuit. In fact, it was taken before this lawsuit even commenced. It would only be hearsay.

THE COURT: It would be hearsay unless, of course, this is one of those questions, as there have been a few, in which a proposition has been put to the witness by reading from a deposition and he has been asked whether he agrees with it or not.

If he says he agrees with it, then that might be one thing.

MR. BROOKS: The question that follows this quotation is:

"Q Did Mr. Ramsey report that to you?

"A Yes."

THE COURT: If that's all there is to it, I would agree that the objection is to be sustained. That seems to be all there is to it, so I agree. The objection is sustained.

MR. FRIED: That's all I have to read in Mr. Vanderbilt's deposition, reserving, of course, any redirect examination that was conducted at that time after the other portion of the deposition.

THE COURT: All right.

Mr. Brooks and Mr. Loflin?

Mr. Brooks and Mr. Loflin will now read those portions of the deposition of Mr. Vanderbilt which they think are relevant here and can make such appropriate explanations as they feel are necessary to connect what has been read with what is going to be read.

MR. BROOKS: Thank you, your Honor.

Mr. Fried took some of my act away in his reading and I'm not as fully coordinated as I would like to be. Therefore I would like permission to read the questions and the answers myself and excuse the reader.

THE COURT: All right, if you will be scrupulous about saying the words "question" and "answer."

MR. BROOKS: I would like permission to note that this was a deposition of Mr. Vanderbilt taken on January 5, 1976 in the city of Philadelphia, where he lived.

THE COURT: And that was, in other words, about four months ago.

MR. BROOKS: Yes.

THE COURT: And I guess it is fair to state six years, roughly six years, after the event to which reference is made.

MR. BROOKS: And the first two passages are to identify Mr. Vanderbilt's capacity at Blair at the time of the events in '69 and '70.

"Q What was your position at Blair & Co., Inc. at the time?

"A Chairman of the board.

"Q How long had you been chairman of the board, do you recall?

"A A few months."

On page 31, line 13, I am just going to read an answer providing similar information:

"Just for clarification I might state here that I was chairman of the board and in a policy position. I was not in a day to day operating position. I have no familiarity with the day to day operations of securities firms. So, therefore, technical details such as this would not really be of my concern."

On page 73 and 74 Mr. Fried read testimony about the January meeting with the SEC and the Stock Exchange. I would like to read one question and one answer on that page. It is lines 15 through 17:

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"Q Did they tell you" -- "they" referring to either the SEC or the New York Stock Exchange or both, at that January meeting -- "to raise additional capital at that time?

"A I don't believe so."

At page 79 and page 80 Mr. Fried read testimony about the liquidation of the securities in the allied members and members secured demand note accounts. I'll read a question and answer from page 80, beginning at line 4. I'll begin at the bottom of 79. And this was read by Mr. Fried, but it is a necessary preface, I think, to my question:

"Q Forgetting any individual state of mind, was it considered in the industry, securities industry, as detrimental to liquidate one's subordinated securities?

"A Detrimental to what?

"Q Detrimental to the investor.

"A Oh, I would assume -- I would say the answer is yes.

"Q Why is that?

"A I don't know. It might, in certain cases, be a good break for them if their securities were liquidated at the top of the market."

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MR. BROOKS: At the bottom of page 89, Mr. Fried read a description indicating that the March 10, 1970 letter, which is Exhibit 15 in this case, was marked as a deposition exhibit, and then Mr. Fried read the following, and I will read one more question and answer:

"Q Did you see Exhibit 15 at or about the date that appears in the upper right hand corner on the front page?

"A Did I see that specifi letter?

"Q Or a copy of it.

"A I don't recall.

"Q Did anybody bring to your attention the content of the letter?

"A Quite obviously."

MR. BROOKS: Somewhat before page 136, Mr. Fried read questions and answers, I believe, about the inclusion on the financial statement, which is Exhibit 2 in our proceeding, of information disclosing inadequacies in the accounting and record keeping of Blair & Co.

MR. FRIED: What page?

MR. BROOKS: Page 136. I will read from the bottom of 136, with that preface.

"Q Can we assume if it isn't included in the statement issued to customers that you concluded it wasn't serious?

"A I would assume that it was something that those in charge felt could be resolved, in other words, the securities

could be located."

MR. BROOKS: This series of questions and answers relates to the topic of the conversion of Blair's record keeping to the Midwest Stock Exchange system and begins on line 21 on page 43.

"Q Why was the conversion made to the Midwest system at the Blair Division?

"A Well, we were on another system, and therefore we were operating with two back offices, and when Schwabacher was acquired, it was with the idea that eventually we would obviously, for efficiency's sake, go to one back office. However, with the volume on the New York Stock Exchange dropping so abruptly during the latter part of 1969, I guess during most of 1969 it became quite obvious that we couldn't run an efficient shop with low volume and the cost of two back offices, so we accelerated our plans to operate under one system.

"Q Wouldn't the lower volume decrease the back office problems?

"A It might. It certainly wouldn't improve its earning capabilities, though.

"Q So that the basic reason for the conversion was to get on to one system, into one back office?

"A Which would mean --

MP 3 "Vanderbilt

"Q For cost economy; is that right?

"A Right.

"Q As opposed to increasing the efficiency of the operation?

"A Right."

MR. BROOKS: On page 156, Mr. Fried read testimony which related to the conversion of Blair's record keeping system to the Midwest Stock Exchange record keeping system, which ended with this question and answer, to which I will add one question and one answer:

"Q How about with the New York Stock Exchange?

"A I don't recall specifically, but I think probably it was the subject of discussion with the New York Stock Exchange.

"Q What did they urge you to do?

"A I don't recall. I would assume that" --

MR. FRIED: I move to strike that out as a pure assumption on the witness' part.

THE COURT: Yes. He assumes on both sides. Both for you and Mr. Brooks.

MR. FRIED: I withdraw my objection.

MR. BROOKS: I will read the answer from the beginning.

"A I don't recall. I would assume that they wouldn't

recommend one way or the other. I think we would obviously want to keep them informed of what we were proposing to do."

MR. BROOKS: On page 161, the preceding testimony concerns discussing technical aspects of Blair's business, and at line 16 this question was asked:

"Q Did the board or the executive committee assign anybody to perform those functions with respect to Dr. Foley?

"A No. Our position was that Blair is an open book. Whatever information Dr. Foley requires, let us know and we will get someone to produce it for you if you haven't already gotten it. Also, there could have been any one of a number of people who were feeding him information."

MR. BROOKS: And at line 24, on page 181, there is more testimony about the meeting with the SEC in January, beginning with the following:

"Q Mr. Vanderbilt, you testified about a meeting with the SEC in January at which Mr. Stock, I believe you said, was present representing the New York Stock Exchange.

"A Correct.

"Q The pages that have been put into this transcript from the R. Neil transcript" -- which you will recall Mr. Fried read -- "indicate that Mr. Stock didn't say anything at that meeting. Will you tell me who was at that meeting on behalf of the SEC?

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"A The fellow who is now in charge, the head of the District, the head of the SEC New York District."

MR. FRIED: What page is this, please?

MR. BROOKS: I'm sorry. Page 182.

"Q Kevin Thomas Duffy?

"A That's the fellow. Kevin Duffy.

"Q Was he there, or was he chairman of the meeting?

"A He was the chairman.

"Q Were there any other personnel from the SEC at the meeting?

"A Oh, I think, as I recollect, there must have been at least two more, maybe three or four of them.

"Q Do you recall any of their names?

"A No.

"Q Would you recall them if I suggested some names to you?

"A Well, suggest.

"Q Bill Moran?

"A Yes. I think he was there.

"Q Do you recall any others?

"A No.

"Q Mr. Barton?

"A The name doesn't ring a bell.

"Q At the meeting, was Blair represented by counsel?

MP 6 "Vanderbilt

"A No; I don't believe so. Oh, wait a minute. We may have had with us a fellow called Richardson, who was the in-house counsel.

"Q How about a Mr. Joe Daley?

"A Joe was with Moody, Stern."

MR. BROOKS: I think that should be corrected to "Mudge, Stern".

THE COURT: Mudge, Stern. All right.

MR. BROOKS: Continuing:

"But I don't know whether he was with us at that meeting or not.

"Q Okay. Do you recall who called the meeting?

"A I guess Kevin Duffy did, or I don't know how the meeting was set up or by whom.

"Q Do you recall where it was held?

"A It was in Duffy's office.

"Q Where was that?

"A In the Federal Building somewhere.

"Q In New York City?

"A Right.

"Q Can you recall who said what to whom at the meeting?

"A Well, the gist of the meeting was for Jim Ramsey to lay before the SEC and, through Stock, the Stock Exchange that certain serious problems had surfaced as far as Blair was

concerned, and he wanted to go on the record that no information was being withheld. It was all being laid on the table and that he sought direction from the SEC and from the Stock Exchange.

"Q Mr. Vanderbilt, do you recall anything else that was said at the meeting, in words or substance?

"A I recall that Jim Ramsey said in so many words, 'Gentlemen, if we are not in compliance and you think it best that the firm be closed down, just tell me.'

"Q Did Mr. Duffy make any response to that?

"A Well, the consensus of the meeting, as I remember it, was, keep things going; everything isn't lost yet; we stand behind you and are ready to help you, and let's keep plugging away and see if these problems can be corrected.

"Q Is that your total recollection?

"A Yes.

"Q You have given us what was said at the meeting?

"A Right.

"Q Was there any other similar meetings with the SEC, similar to that meeting which you have described?

"A Not that I attended, but I am sure that there were such meetings, because Jim Ramsey made a point to keep in touch on almost a daily basis with both sides."

MR. BROOKS: This is more on the SEC meeting, and it

A 402

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includes a quotation from the transcript of another deposition in the Foley vs. Vanderbilt action, beginning on line 11, on page 187:

"Q Let me read from an answer you gave at page 93, line 4, of the transcript in the Foley vs. Vanderbilt action and see if that refreshes your recollection on the point of supplying information to the SEC. This is your answer:

"'I understand, directly and indirectly, that any and all financial information was available to the New York Stock Exchange and to the SEC, and they knew very well that we shared their concern about the financial viability of Blair & Co. We promised them and followed through with keeping them apprised on a weekly basis of what was going on.'

"So that it is your testimony that Blair did advise the Stock Exchange?

"A Right, after 1969.

"Q On approximately a weekly basis?

"A Right.

"Q Does that refresh your recollection on a practice or agreement to supply the SEC with weekly information?

"A Yes."

MR. BROOKS: Now, page 190, beginning at line 9, on the same general topic.

MP 9 "Vanderbilt

"A I know we kept them up to date. We furnished them information of a financial nature and anything else that they requested, but whether it was weekly or daily or what, I don't recollect.

"Q And that is true as to both" -- meaning both the SEC and the Stock Exchange.

"A On what form?

"Q Is that as to both regulatory bodies?

"A Yes.

"Q The SEC and the Stock Exchange?

"A Right."

MR. FRIED: Your Honor, I think it should be made clear that this is Mr. Brooks' examination rather than the deposition taken by plaintiffs' counsel.

THE COURT: Yes. The jury will find it helpful to know who was asking the questions at this time.

Do you mean the questions now being read were put by Mr. Brooks?

MR. BROOKS: Not all of them, your Honor.

THE COURT: Well, will you indicate the difference? I think it is appropriate that the jury should know who is asking the questions.

MR. BROOKS: Do you want me to back up?

THE COURT: No, but please do so from here on.

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MR. BROOKS: I am asking this question and the following questions, unless I indicate otherwise.

"Q Mr. Vanderbilt, do you recall Dr. Foley ever explaining to you why he wished to make an investment in Blair & Co.?

"A Oh, yes. We had numerous philosophical discussions about investments. Dr. Foley, whom I had known back in my days in industry, 'way back before he became interested in Blair -- this goes back to the Psychological Corporation of America, which we happened to use when I was president of a large industrial firm, and Foley was an inquisitive guy on investment opportunities" --

MR. FRIED: I will object to this.

THE COURT: Let me look at the transcript.

MR. BROOKS: Your Honor, if his objection is based on what was read, I will be prepared to read other parts of the transcript.

THE COURT: Well, let me see the transcript first.

(Pause.)

THE COURT: I agree with Mr. Fried that lines 7 through 11 should be eliminated.

MR. BROOKS: I have no problem with that, your Honor.

THE COURT: All right.

MP 11 "Vanderbilt

MR. BROOKS: I will read the previous question and the answer which I partially read:

"Q Mr. Vanderbilt, do you recall Dr. Foley ever explaining to you why he wished to make an investment in Blair & Co.?

"A Oh, yes. We had numerous philosophical discussions about investments. Dr. Foley, whom I had known back in my days in industry, 'way back before he became interested in Blair -- this goes back to the Psychological Corporation of America, which we happened to use when I was president of a large industrial firm, and Foley was an inquisitive guy on investment opportunities, but I remember among other things his saying, 'Now, if any interesting investment opportunities come along, I'm ready to explore them with you.'

"We would philosophise about Blair & Co. I was kind of inquisitive why he would want to get into Blair or any member firm.

"Q What did he tell you about that?"

MR. FRIED: I have an objection to the answer here, because it goes off into other discussion --

THE COURT: Ordinarily an answer by a party would be admissible.

MR. TURETSKY: Mr. Vanderbilt isn't a party to the action.

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(Pause.)

MR. FRIED: I will withdraw my objection, your Honor.

THE COURT: All right. The jury will have to determine whether Mr. Vanderbilt is stating what he understood Mr. Foley's general philosophy was or what he was stating to Mr. Vanderbilt about it.

MR. BROOKS: I will read the question again:

"Q What did he tell you about that?

"A Well, he felt, and I couldn't argue with his theory of investing, that the time to invest in an industry is when the industry, due to circumstances beyond its control, is down at the bottom and looks like a disaster. Get in at the bottom, if you can assure yourself that the industry is going to survive, and hence prosper in the future.

"That was his philosophy on how to make a lot of money.

"Q Did he apply that philosophy in your conversation to the securities brokerage industry?

"A Oh, definitely. He told me without exception that the securities industry, applying that formula for investment purposes, the securities industry was number one on his list, and I remember laughing and saying, 'I couldn't argue with you on that point.'

MP 13 "Vanderbilt

"Q Did he apply that philosophy to Blair & Co. in particular?"

MR. FRIED: I object to tha t, your Honor, as an operation of the mind.

THE COURT: Well, again I am at a loss without the transcript. It would help if I had a copy of the transcript to follow.

(Pause.)

THE COURT: The objection is sustained.

MR. LOFLIN: Your Honor I will not have any objections to anything Mr. Brooks is reading, and I will provide you with my copy, so you can follow it.

THE COURT: Thank you.

MR. BROOKS: Your Honor, does your sustaining the objection apply to all of the material on the bottom half of 191, over to the top half of 193?

THE COURT: Let me take a look.

MR. BROOKS: Or simply to the words following the answer on line 12.

THE COURT: Well, at least line 12. Let me see what lse e

This is on page 192?

MR. BROOKS: Yes.

THE COURT: All right. It certainly does apply to

the remainder of the page and the carry-over.

MR. BROOKS: I will pick up on 201, line 11, on the same subject: Mr. Foley's investment philosophy:

"Q Was he" -- meaning Mr. Foley -- "talking about depressed industries or was he talking about companies that were not holding their own in the industry?"

MR. FRIED: I object to this answer, too, because here we have nothing but conclusions of the witness, your Honor.

THE COURT: Where is the answer?

MR. BROOKS: Line 2 on page 202.

THE COURT: Sustained.

MR. BROOKS: On the top of page 206, beginning at line 2:

"Q Did Mr. Rush report to you the progress of his discussions with Mr. Foley?

"A Oh, I'm sure he did. Exactly when --

"Q You were aware of what was going on?

"A Oh, sure.

"Q Do you have any present recollection of the course of these discussions as they were reported to you?"

MR. FRIED: Just a moment.

I object to that, your Honor.

THE COURT: You object to what: the question or the

answer?

MR. FRIED: The answer.

MR. BROOKS: Your Honor, I think we should note now that Mr. Weiss, Mr. Fried's predecessor, has taken over the questioning here. These are the plaintiffs' lawyers questioning.

THE COURT: As I judge the character of the testimony, it seems to me the jury will have to decide whether this is a report of a conversation, although it is put in other terms from time to time.

I will overrule the objection.

MR. FRIED: This is not a conversation with Mr. Foley. This is hearsay, conversations he had. He is talking about the conversations that Rush had with Foley.

THE COURT: Oh.

MR. BROOKS: Your Honor, I don't think that is correct. You look at line 14 --

MR. FRIED: If you look at line 2 --

THE COURT: All right. Let's cut out the first sentence of that paragraph which begins on line 12 from the answer.

MR. BROOKS: I will begin the exchange again. Page 206, line 2:

"Q Did Mr. Rush report to you the progress of his

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discussions with Mr. Foley?

"A Oh, I'm sure he did. Exactly when --

"Q You were aware of what was going on?

"A Oh, sure.

"Q Do you have any present recollection of the course of these discussions as they were reported to you?

"A I remember one discussion that I sat in on, where he recognizes the condition of Wall Street generally, that Wall Street, because of the low-volume situation, was in a very precarious position. He felt that this would not be long-lived, that the industry itself would turn itself around. Therefore, if he could invest in a firm that needed the money -- any firm that didn't need the money wouldn't need Foley or wouldn't want him -- so therefore he had to look to those firms that perhaps needed financial help at that time, that he hoped he could fulfil on a very viable basis. If, as and when the Street in general and this firm in particular would turn around, he would be in a very enviable position from an investment point of view.

"Q Is that your only recollection of what Mr. Rush said to you about this?

"A This is what Foley said.

"Q That's what Foley said?

"A Yes.

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"Q Now, do you recall having given that testimony, Mr. Vanderbilt?

"A Yes.

"Q Is that your testimony today?

"A Oh, I didn't know I had given it specifically, but that's what my testimony is today.

"Q Thank you.

"A More or less."

THE COURT: I am a little confused by what I see on page 207. It says "BY MR. WEISS", which suggests that the previous questions were not by Mr. Weiss.

MR. FRIED: Those questions were put to the witness by Mr. Brooks.

THE COURT: All right.

MR. BROOKS: I am sorry, your Honor. I was confused by the numerous designations of counsel on the previous page.

THE COURT: I am not surprised at anybody becoming confused at this point.

MR. BROOKS: I apologise.

On page 207, beginning at line 20, with Mr. Weiss as the questioner:

"Q I just want to ask you one question:

"Did Dr. Foley tell you that he had looked at Hayden,

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Stone first?

"A No; I think he purposely avoided that statement.

"Q But you were aware of it at the time?

"A Yes. We were all aware of it.

"Q And [illegible] declined to go?

"A There were no secrets on Wall Street" --

MR. FRIED: I object to that.

THE COURT: That statement?

MR. FRIED: Yes. I will object to any such statement.

THE COURT: I agree with that. The jury should disregard the statement that there were no secrets on Wall Street.

MR. BROOKS: Continuing:

"Q What did you hear about his investment with Hayden, Stone?"

MR. FRIED: I object to that. Hearsay.

THE COURT: Sustained.

MR. BROOKS: Continuing:

"Q That you know as a fact?"

MR. FRIED: Same objection.

MR. BROOKS: It has no meaning without the prior answer, so I will skip it.

Beginning at line 15 on page 208:

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"Q Was it your understanding that the discussions with Hayden, Stone were continuing during the time he was negotiating with Blair?"

MR. FRIED: I object to that.

THE COURT: Sustained. As I read this passage here, the information given by Mr. Vanderbilt does not appear to have been given on the basis of first-hand knowledge.

MR. BROOKS: On page 213, beginning at line 12, there is more about the reports that were being given to the Stock Exchange and the SEC by Blair:

"Q Mr. Vanderbilt, you testified that it is your recollection that periodic reports were given to the New York Stock Exchange and the SEC; is that correct?

"A Correct.

"Q Were the same reports given to both of those institutions?

"A I don't know whether they were exactly the same or otn

"Q Did you have any direct contact with the SEC other than that one meeting?

"A Not that I recollect.

"Q Did anybody report to you directly that he had such a contact with the SEC?

A Well, yes. Jim Ramsey had almost continuous contact

with them and the New York Stock Exchange.

"Q And he specified the SEC, did he?"

MR. FRIED: Your Honor, I object to all this as hearsay. Mr. Ramsey should testify to that.

THE COURT: Sustained.

I take it you do not want to read the material on page 214, lines 8 to 12.

MR. BROOKS: I understand your sustaining Mr. Fried's objection to preclude that.

THE COURT: Well, I was having a little fun by asking that question.

MR. BROOKS: I would like to include it in my reading, but I understood it was objected to and sustained.

Question at line 24, page 214:

"Q What did he say about the books and records at that meeting?"

THE COURT: Who was "he"?

MR. BROOKS: The prior questions --

THE COURT: Mr. Ramsey?

MR. BROOKS: I believe this is Mr. Vanderbilt's further report on the January meeting at the SEC, which Mr. Vanderbilt attended.

THE COURT: That may be, but the question is being asked there, by the way, by Mr. Weiss and refers to somebody

else.

MR. FRIED: If you look at page 214, it was Mr. Ramsey he was referring to.

THE COURT: It was the last-named individual that he was referring to.

MR. BROOKS: I agree.

"Q What did he say" -- meaning Mr. Ramsey -- "about the books and records at that meeting?

"A He said, 'We've got serious problems, we think, and we don't know the extent of our problems.'

"Q Wait a second now. Are you talking about the books and records or the financial condition, or was he talking about the books and records?

"A It seems to me we are going right around the mulberry bush, and you will meet Mr. Rish around the corner.

"Q Which of the two was he referring to at the meeting with the SEC?

"A Which of the two?

"Q Is it books and records or the financial problem?

"A It was probably both."

THE COURT: I think you should read the next question and answer, too.

MR. BROOKS: Yes.

"BY MR. WEISS:

"Q Did he specify both?

"A I don't remember specifically, but it was a general kind of meeting with certain specifics to indicate why he was concerned or why we were concerned about the firm."

MR. BROOKS: Should I go on?

THE COURT: No.

MR. TURETSKY: What page is that?

MR. BROOKS: 215.

Continuing with Mr. Vanderbilt's report about the same meeting and Mr. Ramsey's presentation at that meeting with the SEC and the Stock Exchange representatives, line 14 on page 216:

"BY MR. WEISS:

"Q And he told them everything; is that right?

"A Everything we knew at the time."

MR. BROOKS: That completes my supplementation of Mr. Fried's reading.

THE COURT: All right. Mr. Loflin, do you want your edited copy?

May I borrow yours now, Mr. Turetsky?

MR. TURETSKY: Yes, your Honor.

MR. LOFLIN: You have heard prior questions relating to a meeting of January, where there were representatives of

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Blair, the New York Stock Exchange and the SEC. I am going to read a few questions and answers from pages 48 and 49 relating to that meeting. These questions were put by Mr. Melvyn Weiss, who on this occasion was representing Dr. Foley and the other plaintiffs.

Beginning on page 48, line 17:

"Q Who was present?

"A I was present with Jim Ramsey, who asked me to go along with him."

You will recall, the speaker is Mr. Oliver Vanderbilt, chairman of Blair.

"A Wait a minute, now. No. I have to correct that. My recollection of that meeting is, I believe, that that meeting was that the SEC and a member of the staff of the New York Stock Exchange was present at the meeting. I believe that is the meeting I am thinking of.

"Q Who was present from the New York Stock Exchange?"

MR. FRIED: Your Honor, this was already read by me. I understood he was to supplement the reading. This is just a repetition.

THE COURT: I think, in the light of the difficulty of understanding this material, it is appropriate for Mr. Loflin to repeat matter that is fairly critical.

MR. LOFLIN: (Reading)

"Q Who was present from the New York Stock Exchange?

"A I don't recollect. Give me a few names. I think I could pick them out. I don't know those fellows well enough.

"Q Was Mr. Arning present?

"A No.

"Q Mr. Stock?

"A I believe it was Stock.

"Q But you have a recollection Mr. Arning was not present?

"A Not at that meeting.

"Q Was Mr. Bishop there?

"A Not at that meeting.

"Q Mr. Saul?

"A No."

You will recall that Mr. Fried and I agreed a little while ago that Mr. saul, Mr. Ralph Saul, was President of the American Stock Exchange.

I turn now to page 193, beginning at line 17. These are questions that I asked Mr. Vanderbilt on cross examination:

"Q Mr. Vanderbilt, you have in front of you Exhibit 15. Have you had a chance to read that, sir?

"A Yes.

"Q Could you tell us from your own recollection who was present at thatluncheon meeting at AMEX that you have referred to in your previous testimony in the Arneil case?

"A I would assume that everybody listed herewith was in attendance.

"Q By 'herewith' do you mean those people listed on Exhibit 15?

"A Right.

"Q By referring to that letter, which has a list of persons scheduled to attend the luncheon, does that accord

with your recollection of who in fact did attend?

"A There might have been one or two missing, but I don't know for sure. But the majority of those listed herewith were in attendance. It was a fairly large luncheon, twelve people. I assume that was about the number that attended.

"Q This exhibit also refers to a February 10th luncheon date. Does that accord with your recollection about the time when the luncheon occurred that you have referred to previously?

"A I have no reason to doubt that this was not the date.

"Q Was there more than one luncheon meeting --

"A No.

"Q -- of the sort you have described?

"A Just one.

"Q Just one. Did Mr. Saul preside at the meeting?

"A Yes, I believe he did.

"Q Was he President of the American Stock Exchange?

"A Yes.

"Q Other than this luncheon meeting which you previously described, did you personally have any contact with AMEX officials, say from the period beginning in December 1969 through the spring of 1970?

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"A Not that I recollect.

"Q At this luncheon meeting were you or Blair & Company directed to do anything concerning it?

"A No. That wasn't the purpose of the meeting. As I previously testified, it was to get together, get to know each other, if you require any of our services -- this is the AMEX talking to us -- if we can help you on any of your problems, let us know. We are all ready to help you.

"Q During the same period, that is, beginning in December 1979 through the spring of 1970, was Blair & Co. given certain instructions concerning its net capital condition by the New York Stock Exchange?

"A Between what period?

"Q Beginning December 1969 and through the spring of 1970.

"A Oh, yes. That was a rather critical period in there.

"Q During that time did you receive any comparable instructions from the American Stock Exchange?

"A Not that I know of."

That concludes my reading, your Honor.

THE COURT: Thank you, Mr. Loflin.

MR. FRIED: Mr. Loflin, that Exhibit 15 to which you referred is not in evidence.

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MR. LOFLIN: I am aware of that.

THE COURT: Do you have any further reading from this deposition?

MR. FRIED: I do, your Honor. But I would like to have five minutes.

THE COURT: All right. We'll take five minutes.

(Recess)

THE COURT: Mr. Fried?

MR. F_IED: Your Honor, reference was made in the deposition to exhibit 15, which had been marked --

THE COURT: That is, Exhibit 15 in the deposition.

MR. FRIED: 15 in the deposition, which is Exhibit 19M for identification here.

I would like ot offer that in evidence at this time.

MR. LOFLIN: I have no objection.

MR. BROOKS: I am letting Mr. Loflin take the lead on this one, your Honor. If it is allright with him, it is all right with the New York Exchange.

THE COURT: I think it ought to go in because the witness referred to it. The jury is entitled to see what he is talking about.

Is that M or N?

MR. FRIED: It should be O, your Honor.

THE COURT: All right.

xxx (Plaintiffs' Exhibit 19-O for identification was received in evidence.)

MR. FRIED: May I read it, your Honor?

THE COURT: You may.

(Mr. Fried read to the jury from Plaintiffs' Exhibit 19-O in evidence.)

MR. FRIED: Now, if your Honor please, I have just a very few more things to read.

Page 169. These questions were put to the deponent by Mr. Weiss:

"Q Are you familiar with the term 'knowledgeability letter'?

"A No.

"Q You don't know what a knowledgeability letter is? You never signed one?"

MR. BROOKS: Your Honor, my understanding of what Mr. Fried is now doing is that it must be responsive to our supplementation of his initial reading, as it would have been on redirect of a witness. This subject matter which he is now reading was neither covered by me nor by Mr. Loflin, so I think it is inappropriate and I object.

THE COURT: Well, I think technically you are correct. But I think Mr. Fried simply omitted reading this the first time around and I'll allow it. If you want to read anything in response to it, you may.

MR. FRIED: (Reading)

"A If you could explain to me what it is, I could probably answer the second question.

"Q A letter that the New York Stock Exchange requested a subordinated lender to sign before he makes an investment.

"A Oh, yes.

"Q Are you now familiar with it?

"A Right.

"Q Do you know what I'm referring to?

"A Right.

"Q When was the first time you ever saw such a letter?

"A Well, I presume, if that was the requirement of any investor in a member firm at the time that he came in, then I assume it was then.

"Q Do you know for a fact that there was such a requirement?

"A No, I don't know.

"Q Well, did you ever sign one?

"A I don't know. That goes back even further than the six years in time. How could I remember that?

"Q Were you informed that Dr. Foley was requested to sing one?

"A I don't recall. If that was the order of the day, well, quite obviously he would be required to sign one.

"Q Did you have any discussions with anybody as to what syould be contained in such a letter?

"A No, not that I recall."

Transcript page 185.

THE COURT: What line? You read some of this already.

MR. FRIED: Lines 19 to 24, your Honor. This is a question by Mr. Brooks:

"Q At page 20 you were asked, referring to a discussion apparently between June 1969 and June 1970, and you answered at line 15, 'Well, we had several discussions which I did not spearhead but sat in on dates, I don't remember, with the Stock Exchange, the SEC obviously, with our accountants, because we felt beholden to the regulatory bodies to keep them advised of progress from one day to the next.'

"Does that refresh your recollection on other

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meetings with the SEC?

"A Well, I don't recall any meetings, subsequent meetings, with the SEC that I attended. I remember having a meeting at the Exchange once with Arning and a couple of times with Bishop. When and what was discussed, I don't recall.

"Q Let me read from page 66 of that same transcript at line 11, where you answered:

"A Well, of course, obviously. It was of concern to us. We had meetings, I recall, in January or February at about that time and several with the SEC and the New York Stock Exchange about this matter.

"Q Referring to the matter of problems at Blair & Co. about this date, does that refresh your recollection of a subsequent meeting with the SEC?

"A No."

Page 200, line 7. And these are questions by Mr. Weiss following the discussion of the investment philosophy of Dr. Foley:

"Q When you testified it was his investment philosophy to buy into an industry when it was depressed, did he say that he also thought it was a good idea to buy into a company that was in dire financial straits?

"A No, I don't recall his saying that he wanted

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to invest in a company in dire straits.

"Q Did he ever make a statement that part of his investment philosophy was to invest in a company whose books and records were so inaccurate that they could not be relied upon to determine the true state of the company's financial condition?

"A I don't recall him specifically saying that that was one of his investment requirements.

"Q Did he ever say that he would invest in such a company?

"A Not that I know of.

"Q When he was talking, according to you, about this philosophy of investing in depressed industries, was he talking about investing in undervalued companies because the company was undervalued due to a drop in the investors' price/earnings multiples afforded by that industry?"

THE COURT: I don't see an answer on that page.

MR. FRIED: I'm sorry. That was objected to.

"Q Was he talking about depressed industries or was he talking about companies that were not holding their own in the industry?

"A I think that his philosophy was that he thought that an industry that was -- well, for one reason or another

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depressed at a particular time was worthy of his investment consideration, and therefore I would assume that he would be attracted to that company or that industry where he could make the best investment deal for himself.

"Q Irrespective of the condition of that company?

"A Well, that is all part of the investment decision.

"Q What is? The condition?

"A The valuation of the condition.

"Q The what?

"A The condition of the company.

"Q He would have to satisfy himself as to the condition of the company, is that correct?

"A Yes, obviously. If he or anybody else" --

MR. BROOKS: I am going to object at this point because I think we are clearly --

THE COURT: Sustained. I think Mr. Vanderbilt is giving his own philosophy at that latter part of that sentence.

MR. FRIED: What was the ruling, your Honor? Was that sustained?

THE COURT: Sustained from the point where you stopped.

MR. FRIED: I want to go back to page 136.

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THE COURT: That is disappointing.

MR. FRIED: I am just hopscotching here.

MR. TURETSKY: It is my fault.

THE COURT: I am not sure that you care, but it is my impression that the jury has a pretty good understanding of his testimony, as good as they will get.

MR. FRIED: There is a discussion here regarding the missing securities, your Honor, and I will be reading page 136, lines 19 to 24.

MR. BROOKS: Your Honor, I read this and I would be pleased to have read this again, but I think it might waste the Court's time.

THE COURT: No. I'm becoming a little less broadminded as the afternoon goes on.

MR. FRIED: These are the questions and answers that follow what Mr. Brooks read.

THE COURT: The point that you were referring to he read. I remember it.

MR. FRIED: That's right.

THE COURT: You want to go beyond that, you mean?

MR. FRIED: The witness answered with regard to the missing securities, "In other words, securities could be located."

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And the question after that, which Mr. Brooks did not read, was:

"Q Did you receive a report to that effect?

"A I don't recall.

"Q Who was in charge? When you say "those in charge," whom did you make reference to?

"A Well, I believe at that point in time George Morpurgo was in charge of the back office. It would have been his direct responsibility to locate the missing securities.

"Q Did he report to you?

"A No.

"Q To whom did he report?

"A He reported to Jim Randall."

Mr. Brooks read from page 161 about Blair being an open book, and the next question is:

"Q But you are not aware of information that was given to him" -- "to him" being Dr. Foley -- "or any reports given to you as to what was given to him?

"A No. I don't think that was necessary.

"Q You just worked on certain assumptions, then?

"A Yes.

"Q Were you aware that a formula was in the Foley contract?

"A A formula? What?

"Q Having to do with the subordinated securities of Blair & Co., Inc.

"A What kind of formula?"

I think that's all I have, your Honor.

THE COURT: All right. Thank you.

Do you gentlemen feel you have to read anything further? I hope not.

MR. BROOKS: Not for me, your Honor.

MR. LOFLIN: Not for me.

THE COURT: Very good.

I take it that completes, then, the testimony, in effect, of Mr. Vanderbilt.

MR. FRIED: At this time, your Honor, I should like to offer in evidence as an exhibit the constitution and rules of the New York Stock Exchange dated August 15, 1969. I had better mark this Exhibit 20.

THE COURT: I don't suppose we are going to wind up referring to every one of the rules. You can refer to such rules as are appropriate.

Mr. Brooks?

MR. BROOKS: Could counsel specify what portions of the constitution and rules he is offering?

THE COURT: I think, before anything goes to

* * *

Q What does that term mean?

A An audit conducted in two parts.

Q In connection with the affairs of Blair, how did you identify or refer to the term "split audit"?

A An audit first done with the Schwabacher organization, or the Western Division as we termed it, and then the audit by the Eastern Division put together.

Q After the merger, Schwabacher was known as the Western Division of Blair & Company, and the Blair & Company original was known as the Eastern Division, is that right?

A Yes.

Q And then auditors were called in to make an audit in 1969, do you recall?

A Yes.

Q Do you know who the auditors were?

A Arthur Young.

Q By the way, did Arthur Young & Company make the surprise audit in 1969?

A I don't know.

Q Isn't it a fact that Arthur Young & Company did make a surprise audit?

A I have no idea.

Q Was Arthur Young & Company the regular auditors

for Blair & Company?

A Yes.

Q They had been for a number of years the regular auditors of Blair & Company, is that correct?

A For a year or two.

THE COURT: Before what time, when you say "a year or two"?

THE WITNESS: I think they were the auditors of our predecessor. There was a merger of two firms, and as I recall it they were the auditors of the surviving merged firm.

THE COURT: To the best of your recollection, when did Young start doing work for Blair?

THE WITNESS: I really don't know, your Honor. I'm not sure.

Q Did you know that Arthur Young & Company were also the auditors for the Midwest Stock Exchange?

A Yes.

THE COURT: When did you learn that?

THE WITNESS: I would say 1969, at some point.

Q Were they also the auditors for the Midwest System, the computer System?

A I don't recall.

Q Coming back now to the split audit, do you

recall having any discussions regarding the split audit?

A Yes.

Q Do you recall the reasons given for having a split audit?

A Some. Perhaps not all, but some.

Q Wasn't the reason given for the split audit that you knew about the fact that they were --

THE COURT: Why don't you ask him the reason was that he recalls?

MR. FRIED: Thank you, your Honor.

Q What were the reasons that you recall for the split audit?

A Because of the amount of tense confusion that was in progress due to the conversion, due to the problems that Schwabach[illegible] had had prior to the merger, at the time of the merger and after the merger, we felt it would be much simpler to keep those problems separated so that we would be able to identify them more readily before -- and also the capitalization would be more readily identifiable before you came to the East, so it was really a matter of keeping the situation straight.

We felt that it might be a very good idea.

Q Do you recall when the Western Division audit was completed, Mr. Ramsey?

A No, I don't, offhand.

Q Do you recall when the Eastern Division audit was completed?

A I think that was dated September 1[illegible].

Q Mr. Ramsey, I show you the transcript of the investigation of the Stock Exchange, page 43, and ask you to look at that and tell us if it does not refresh your recollection as to the date when the audit of the Western Division was completed.

A This says June of 1969.

THE COURT: Does that refresh your recollection?

MR. FRIED: Does it refresh my recollection?

THE WITNESS: No.

Q At that time were you asked those uqestions and did you make the answer that the Western Division audit was completed?

A Yes.

Q Were there extensive differences noted between the two audits?

MR. BROOKS: Objection to the form of the question.

THE COURT: Sustained. It is unclear to me and I am afraid it might be to the jury.

Can you clarify that, please?

Q Did you examine both audits at the time they were submitted to the Blair & Company?

THE COURT: That is, the Eastern or Western or what?

MR. FRIED: The Eastern and Western audits.

A Yes.

Q Did you determine at that time whether there were extensive differences?

MR. BROOKS: Objection to the form of the question.

THE COURT: I am not sure. Does thatmean the content of one was at least in part inconsistent with the content of the other?

MR. FRIED: That's what I am trying to find out.

THE COURT: Is that what your question is? That is what your question is?

Q Did you note differences between the two --

THE COURT: "Differences" is an ambivalent word. I think you mean something inconsistent. They are certainly different. They did not cover the same subject.

MR. FRIED: I amtrying to ask him now what are those differences, because he testified there were differences.

THE COURT: Oh, excuse me.

MR. BROOKS: I don't think he has testified that there were differences between the two.

MR. FRIED: I'll ask him.

Q Did you find any differences between the Western --

THE COURT: He can ask him whether he found any differences.

Q Did you find any differences between the Western and the Eastern audit, Mr. Ramsey?

A I don't know what that means, Mr. Fried.

Q Do you remember being asked this question --

THE COURT: Apparently once before you said there were differences. Do you know what you meant then?

THE WITNESS: No.

THE COURT: Do you want to look at your testimony and see?

(Pause)

MR. BROOKS: What page?

MR. FRIED: 43.

(Pause)

A I see.

Q Having read that testimony, Mr. Ramsey, does it refresh your recollection as to whether you found

extensive differences between the Eastern Division audit and the Western Division audit?

A Yes, there are extensive differences.

Q And you so testified, did you not?

A Yes.

* * *

can bring that out in cross-examination.

MR. FRIED: I would be willing to take anything Mr. Brooks wants to give me.

THE COURT: I will leave that to counsel to settle that without taking up the time of the Court and the time of the jury with that.

MR. BROOKS: All right.

Q Mr. Ramsey, there was testimony by you that there was a time when there were unlocated securities; is that right?

A Yes.

Q From the time or up to the time you left, were any of the unlocated securities found?

A Yes. It's my impression that most of the unlocated differences were found.

Q You say that that is your impression now?

A Yes.

Q Was that your impression at the time in --

A As far as I know.

Q Was that your impression at the time you were examined, on October 4, 1972?

A As far as I remember.

MR. FRIED: Will you excuse me for just a moment, your Honor, while I consult my notes?

THE COURT: All right.

(Pause.)

Q Do you recall being asked this question and giving this answer --

MR. BROOKS: What page, please?

MR. FRIED: Page 62.

Q (Continuing) "Q Do you recall whether or not any of the $2,400,000 were ever located?

"A I do not remember."

Do you remember being asked that question and giving that answer?

A No.

Q Do you remember that the $2,400,000 related to unlocated securities,or missing securities?

A No; I don't recall it.

Q Let me read to you further from your deposition and tell me if you recall giving this testimony:

"Q Do you recall whether or not so far as the Blair Division was concerned, the amount became even larger in missing securities?

"A I don't recall.

"Q Up until the time that you left Blair, had the $2,400,000 in missing securities been located?

"A I don't know.

"Q You don't know?

"A No."

Do you remember being asked those questions and making those answers?

A Approximately, yes.

THE COURT: Well, do you now recall that, as you said --

THE WITNESS: Oh --

THE COURT: -- that the securities or many of the securities were recovered before you left? Before Mr. Fried read to you from your prior deposition, you had answered that you thought that most of the securities that you thought were lost were found before you left Blair.

THE WITNESS: Yes.

THE COURT: In the light of what you have heard of your earlier testimony, what is your present testimony?

THE WITNESS: That many of them were recovered and located.

THE COURT: All right.

Q Did you ever receive any report that any unlocated securities were located, Mr. Ramsey?

A Yes.

Q In writing?

A I don't know how I received it. I just heard that

much of it was recovered.

Q You say you heard that. From whom did you hear it?

A I don't recall.

Q $2,400,000 in securities were missing or unlocated, and you don't recall who told you they had been located? Is that what you are saying, Mr. Ramsey?

A That's exactly what I am saying.

Q Mr. Ramsey, there came a time, did there not, in the latter part of 1969, when you stated that the books and records of Blair & Co. were out of control.

A Right.

Q Did that take place as of December 16, 1969?

A I don't know what date that they went out of control.

Q Well, what did you do about it when you learned that the books and records were out of control?

A It was told to me they were out of control on December the 16th.

Q Who was it that told you the books were out of control?

A The president of the Midwest system.

Q And did you have any meeting with your board of directors and acquaint them with that fact?

A Yes.

Q When did your meeting take place?

A Some time between -- I don't know the date. Some time between then and the end of the year, I would think.

Q Did you call a meeting of the board of directors, as president of Blair & Co.?

A I don't remember whether I called it or not. There possibly was a regular meeting to be held, anyway.

Q How often did the board of directors of Blair & Co. meet?

A Monthly.

Q And were minutes kept of the regular monthly meetings of the board of directors of Blair & Co.?

A Yes.

Q Who kept those minutes?

A The secretary.

Q Who was the secretary in December of 1969 and January 1970?

A I would say Mr. Sullivan. James Sullivan. But the minutes could have been kept by Mr. Hepburn also. One of the two.

Q I am not asking you to speculate. Do you have any recollection as to whether or not there were minutes of the meetings of the board of directors?

A Yes.

Q Particularly the minutes of the board of directors of December 1969 and January 1970.

A Specifically those minutes, no, I don't recall. You asked me if they were taken every month, and the answer is yes.

Q In any event, you reported to the board of directors that the books and records were out of control?

A Not in those words.

Q What words did you use?

A That we were having a rough conversion, that the situation was out of control. We were having a rough time.

Q What did you do after that? I am talking about January 1970.

A I called a meeting of all SDN holders and principal stockholders to discuss it with them.

Q When was that meeting called?

A January the 16th, I think -- 15th. I beg your pardon.

Q Where did the meeting take place, Mr. Ramsey?

A Bankers Club.

Q Did you send out a written notice of the meeting?

A Yes.

Q We are at January 15, 1970. There is a meeting at the Bankers Club of the inside security holders, is that right?

A And outside.

Q And outside, sir.

A Mostly outside. Both.

Q Mr. Foley was not present at that meeting.

A I don't recall.

Q Was Mr. Wygod present at that meeting?

A I would think so.

Q What is that?

A I would think so.

Q Was Mr. Vanderbilt?

A Yes.

Q How many other officials of Blair & Company were present on that occasion?

A I should estimate fifty.

Q The Bankers Club is a club at 120 Broadway, is that correct?

A Yes.

Q Do you recall what you told the assembled group the About how many of them were there, fifty?

A Yes.

Q What did you tell the group that were assembled there at the Bankers Club on January 15, 1970, to the best of your recollection, Mr. Ramsey?

A I explained to them that I had been told we were in the midst of a very rough conversion and that we were not able to determine the capital position of the firm, that because of the inadequate controls as they presently stood we didn't know whether we were $10 million over or $10 millio under, and that the situation appeared to be quite serious.

Q I want you to exhaust your memory and tell us everything you said at that meeting at the Bankers Club.

A I'm afraid that is impossible. That meeting lasted several hours.

Q I'm not telling you to say everything that was said. I'm telling you to tell us everything you remember that you said.

A I believe I brought them up to date on everything that had happened on a day by day situation as I recalled it. I brought them up to date on various reports that I had received by members of the staff, conversations that I had had with various people inside and outside of the organization.

I brought up the ideas or questions as to what

we might do to remedy the situation in the way of additional personnel to be called in, policemen, so to speak. I also told them that I would be going to the New York Stock Exchange and the SEC to discuss it with them.

Q Did you ask any of those present if they were willing to put up any capital?

A I did.

Q So far as you know, did anybody who was present there put up any additional capital after that meeting?

A Mr. Ireland.

Q Mr. Ireland was not present at that meeting, was he?

A I don't know.

Q Aside from Mr. Ireland, did anybody who was present at that meeting put up any capital after that meeting?

A Was Mr. Wygod at that meeting? No, I guess not.

Q Isn't it a fact, Mr. Ramsey, that nobody who attended that meeting put up any cash after that?

A I can't recall that they did.

Q Do you recall being examined in a deposition on November 6, 1972 and being asked at that time:

"Q Were you able to succeed in your attempts to raise it internally?

"A At that point in time, I guess we were

not."

Do you remember being asked that question and making that answer?

A Yes.

Q At the time you went to that meeting, was Plaintiffs' Exhibit 2, which I am now going to show you, printed up (handing)?

THE COURT: The question is whether it had been printed by that time?

MR. FRIED: Yes, your Honor.

A I don't remember when this was printed.

Q Look at Plaintiffs' Exhibit 2. Do you recognize that as a brochure prepared and disseminated by Blair & Company in January of 1970?

A I recognize it as being distributed by Blair & Company at a certain date.

Q Do you know when that was?

A No, I don't remember.

Q Just before that meeting had you received a request from the New York Stock Exchange regarding your failure to file certain reports? And I show you Plaintiffs' Exhibit 19K.

THE COURT: Is it in evidence already?

MR. FRIED: No, your Honor. It is only for

identification.

A I don't recall seeing this.

Q I show you Defendants' Exhibit 19L for identification. Do you recall seeing that before it was sent out?

A No, I don't recall it.

Q Looking at those two documents, can you now state whether or not the report of the financial condition, Plaintiffs' Exhibit 2, which is that printed brochure, had been prepared by that time?

A No, I can't tell by this.

Q Mr. Ramsey, did you tell the people at the meeting on January 15th at the Bankers Club that the books and records were out of control of Blair & Company?

A Yes.

Q Was there any comment by any member of the Blair organization or by any outside subordinated lender at that meeting concerning Blair & Company?

A You will have to ask me a more specific question. I'm not sure.

Q Did anyone ask you if Blair & Company was in capital violation at that meeting?

A Yes.

Q What was your response to that?

A I said it might very well be.

Q Your answer was you didn't know because the condition of the books didn't permit you, is that right?

A I said it might be $10 million over or $10 million under.

Q Were you asked any questions about any missing securities?

A Not that I recall.

Q Were you asked any questions about what losses Blair & Company had suffered for the period ending December 1969?

A I don't recall that question.

Q Blair & Company was on a calendar year basis, was it not?

A It was.

Q And did you receive any report as of the end of 1969, December 31st, of the condition of Blair & Company by the time you went to the meeting at the Bankers Club on January 15, 1970?

A Not that I recall.

Q Aside from any written report that you might have received, did you get information from your accounting department as to the condition of Blair?

A I asked for all reports possible before that

meeting.

Q And at that time, when you received whatever reports you received, did you know whether Blair had lost or made money for the year 1969?

A I didn't know.

Q Didn't any of the assembled people at the Bankers Club ask you was Blair making money, losing money or just what was the condition of Blair?

A Yes.

Q And your answer was that you didn't know because the books and records were out of control.

A True.

Q Is there anything else that you can recollect at this time that you told the assembled group at the meeting at the Bankers Club?

A I don't recall.

Q Following that meeting at the Bankers Club, did you then talk to anyone at the New York Stock Exchange?

A Yes.

Q Did you go there personally?

A Yes.

Q By the way, the offices of Blair & Company, according to this correspondence, was at 20 Broad Street, is that correct?

A That's correct.

Q Where is the New York Stock Exchange?

A 11 Broad Street.

Q That is right next door, isn't it?

A It is.

Q As a matter of fact, your attorneys were also in the same building you were in.

A Correct.

Q How many floors of 20 Broad Street did Blair & Company occupy?

A Two.

Q Coming down to January 16, 1970, you went to the New York Stock Exchange and you had a conversation with somebody there, is that correct?

A Yes.

Q Did you go alone?

A I don't recall whether I did or not.

Q In any event, you recall going to the Stock Exchange either alone or with somebody, is that right?

A Yes.

Q And who was the person or persons you saw at the New York Stock Exchange?

A Mr. Arning.

THE COURT: How do you spell his name?

THE WITNESS: A-r-n-i-n-g.

Q What was his position or title?

A Vice President of the New York Stock Exchange.

Q Did you see anyone else at the Stock Exchange?

A Not at that meeting.

Q Tell us as nearly as you can recollect what you said to Mr. Arning and what he said to you.

A Just as to the meeting that was held at the Bankers Club, approximately what went on, that Mr. Arning said we would have to have a meeting with other members of the staff immediately. I also told him that I would be checking it with the SEC to discuss the same things with them. And subsequent meetings were set up.

Q At the time you went to the New York Stock Exchange, did you tell them that with the records you had then there was no way of being sure whether you were in capital violation or not?

A I did.

Q What else did you tell the New York Stock Exchange on that day?

A I don't recall, except giving them the same picture pretty much as I presented at the Bankers Club.

Q Did you ask for any sanctions at that time?

A Sanctions as to what?

Q Did you ask the New York Stock Exchange to impose any sanctions upon Blair & Company to protect you or protect your organization?

MR. BROOKS: I object to the form of the question. I don't think it is clear.

THE COURT: No. I didn't know whether this was a term of art that the witness might understand.

If you want to ask a leading question here --

MR. FRIED: I'll withdraw the question.

Q Mr. Ramsey, do you remember giving testimony in the Vanderbilt case on October 4, 1972, page 82, in respect to the Stock Exchange, saying:

"On January 16th I went to the New York Stock Exchange and reported this meeting in its entirety to the New York Stock Exchange. As far as to go back to your word 'threatened,' there was not a situation, because I asked for --

"Q I didn't use the word 'threatened.'

"A I asked for any sanctions that they wanted to make on the firm to be put forward at any time they wanted to make them. So, rather than threatened, I asked for them."

Do you remember being asked those questions and making that answer?

A Approximately.

Q Did you ask the New York Stock Exchange, in connection with your request for sanctions, that they become a part of Blair & Company?

MR. BROOKS: I object to the form of the question, your Honor.

THE COURT: Let me see if I got it right. Did you ask the Stock Exchange to become part of Blair?

MR. FRIED: That's right.

THE COURT: All right.

A I'm afraid I don't recall. You will have to ask me a more specific question. As such, I don't recall.

Q Do you remember being asked this question and giving this answer --

THE COURT: The same deposition?

MR. FRIED: Same deposition, page 83:

"Q Did there come a time when the Stock Exchange notified Blair that unless capital was improved, sanctions would be imposed? And I suggest a time in February of 1970 or March.

"A In order to answer your question accurately, I must say, as of January 16th I asked the New York Stock Exchange to be a daily part of or an integral part of the running of Blair & Co. along with any sanctions that they

want to take or may not want to take or anything else."

Q Do you remember being asked that question and making that answer, Mr. Ramsey?

A I don't recall it. But it sounds --

Q You are saying that you did not make that answer?

A No, no way.

THE COURT: Mr. Fried, I am afraid I will have to terminate for the day. I have other matters coming up at this time.

May I see counsel briefly in the robing room?

Good afternoon, ladies and gentlemen. I'll see you tomorrow morning. Please remember not to talk about the case.

(An adjournment was taken to Wednesday, June 2, 1976 at 10.00 a.m.)

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* * *

JAMES B. RAMSEY, resumed.

DIRECT EXAMINATION CONTINUED

XXXX BY MR. FRIED:

Q Mr. Ramsey, last night when we adjourned we were talking about the January 16th meeting with the New York Stock Exchange.

Do you recall that?

A Yes.

Q Did you on January 16th meet with anyone at the New York Stock Exchange in person?

A I think the 16th meeting was a phone call to Mr. Arning.

Q Who was the person to whom you spoke on the 16th?

A Mr. Lee Arning.

Q You told us, you began to tell us, that you had some conversation with Mr. Lee Arning on that day, is that correct?

A That's correct.

Q Have you told us the entire content of the telephone conversation you had with Mr. Lee Arning on that day?

A I tried to as much as possible bring him up to date on the meeting I had had the day previously.

Q Did you see him in person after the telephone conversation?

A Yes.

Q When you saw him in person, what did you tell him?

THE COURT: Was that the same day you saw him?

THE WITNESS: No, it was later.

THE COURT: Approximately how much later?

Q Was it the next day?

A I don't recall. It was within a short period of time.

THE COURT: All right.

Q May I refresh your recollection by showing you the questions and answers in one of the previous depositions that you gave, Mr. Ramsey.

(Handing)

Just read that first page.

Does it say the next day?

A No. I just said that I discussed it with him the next day.

Q The next day.

THE COURT: Does that refresh your recollection that you met with him the next day?

THE WITNESS: No.

THE COURT: All right. Anyway, it was a short time after that, is that right?

THE WITNESS: Right.

THE COURT: Possibly the next day.

THE WITNESS: Possibly the next day.

Q You were deposed in this case, and when you were deposed you said it was the next day, do you recall?

A Do I recall actually talking to him the next day?

Q Yes.

A No, sir, I don't.

Q In any event, whenever that was, what did you tell Mr. Arning when you visited him at the Stock Exchange, which was next door to your building, is that right?

A Right.

THE COURT: Actually it was across the street, wasn't it?

MR. FRIED: No.

THE COURT: Next door? One being 20 and one being 11, I had forgotten. I thought they were across the street.

All right. Go ahead.

A Again it was a recapitulation.

Q Tell us what you said to Mr. Arning, if you recall?

A I don't recall the actual discussion, Mr. Fried, except to say that I reiterated what I had said before.

Q Well, see if I can fix the date for you. I show you a copy of the transcript in the Vanderbilt case, page 82.

Did you state there that on January 16th you went to the New York Stock Exchange?

A Yes. I used the word "went." Whether that was in person or on the phone -- I'm still not quite sure whether it was in person or on the phone.

Q Mr. Ramsey, did you state in that deposition, "On January 16th I went to the New York Stock Exchange"?

A Yes, I did.

THE COURT: Am I correct in understanding from your present testimony that you are sure that you went there either on January 16th or very shortly thereafter?

THE WITNESS: Yes.

Q Are you unable now to state the substance of the conversation you had with Mr. Arning in person on January 16th, Mr. Ramsey?

A The substance of it was bringing him up to date on what had gone on on the computer breakdowns, on the situation as far as I was concerned about whether or not the capital situation was in or out of control, about the situation as I knew it concerning Blair at that time.

Q Did you talk about whether or not you were possibly in violation of Rule 325?

A Yes.

Q What did you tell him about that?

A That we may well be in violation of 325 because I had no idea whether we were over or under capitalization at that point in time. I used the expression it could have been $10 million either way.

Q Did you tell him that because the results of the conversion were unclear as to the state of your book-keeping you thought it was possible that it affected your capital position?

A Yes.

Q Did you tell him that was the reason for the meeting?

A Yes.

Q At the Bankers Club?

A Yes.

Q Did you tell him that was the reason for your calling him?

A Yes.

Q Did you ask him at that time for "any sanctions they wanted to make on our firm to put forward at any time they wanted to make them, so rather than 'threatened,' I asked for them."?

MR. BROOKS: Your Honor, we covered this yesterday.

THE COURT: I thought we did. That particular phrase I remember quite well.

Q Do you remember that being part of the conversation you had with Mr. Arning on that day?

MR. BROOKS: I object, your Honor.

THE COURT: Let's get it over with once and for all.

Do you remember it?

A I don't remember "sanctions" getting into it. You pointed it out to me in the testimony later and I didn't deny the testimony. I didn't actually remember the word "sanctions" coming into it.

Q Mr. Ramsey, you were deposed in the Vanderbilt case on October 4, 1972, weren't you?

A Yes.

Q Do you remember this testimony, page 81:

"Q Did there come a time in early 1970 when the Stock Exchange threatened to impose sanctions of some kind in Blair unless its capital position was improved?

"A This has to be answered in my own way because your question is --

"Q Mr. Ramsey, I assure you that one of the things I have been trying desperately to get from you is an answer, so you answer it any way you can. You answer it any way you think you can.

"A In the first two weeks of January, sometime around the 1st of January 1970, it was reported to me that the financial condition of Blair was certainly -- could be considered suspect as to whether or not it was in compliance with Rule 325.

"On the basis of that, there was some question about it. I called a meeting at the Bankers Club on January 15th or as soon as I could get a meeting together, which that was the first possible date, where I outlined it completely, as far as we knew it, and called on various other members of the staff to outline it, with as many of the board of directors and voting and non-voting stockholders as could be assembled. All were notified, to my knowledge.

"On January 16th I went to the New York Stock Exchange and reported this meeting in its entirety tothe New York Stock Exchange, and as far as -- to go back to you word 'threatened,' that was not a situation because I asked for any --

"Q I didn't use the word 'threatened,' did I?"

MR. BROOKS: Your Honor, this very testimony was read into the record yesterday by Mr. Fried at page 832 of the trial transcript.

THE COURT: I think that was covered yesterday. I believe it was made clear what Mr. Ramsey said on his previous deposition.

Q Do you recall being asked those questions and making those answers?

A Yes.

Q What, if anything, did Mr. Arning tell you on either the telephone or the next day, on January 16th?

A That we would need to get together at future meetings, the additional meetings with the people at the New York Stock Exchange to see what might be done. He also, I'm sure, asked me what I intended to do.

Q Did you ask him whether it was desirable or whether they thought you ought to close shop?

A I said if that were desirable, we would do so.

Q What did Mr. Arning say to that?

A Obviously he could make no more recommendation at that point. He was hearing it for the first time.

MR. FRIED: I move to strike that out.

Q What did he say, Mr. Ramsey?

A I don't recall.

Q Did Mr. Arning tell you to continue your efforts to get more money from outsiders?

A He told me to make every effort to get the firm in as good a shape as possible.

Q Did he tell you in words or substance not to close Blair & Company at that time?

A As I remember that meeting, it was a purely reporting technique and future meetings would be arranged where we could go into it in more detail. He did not try to give me answers at that meeting, as I remember it.

Q My question to you is, did he say in words or substance, "Don't close your shop," or words to that effect?

A At that meeting? I don't recall.

Q Did you tell Mr. Arning that you had been unsuccessful in your attempts to raise any cash, additional capital, internally?

A Yes.

Q Did you talk to anyone at the American Stock Exchange?

A I don't recall whether I did.

Q Do you remember attending a luncheon at the American Stock Exchange on February 10th, Mr. Ramsey?

A I remember attending a luncheon at the Stock Exchange. I don't know if the date is correct.

THE COURT: By "The Stock Exchange" do you mean the American Stock Exchange?

THE WITNESS: The American Stock Exchange.

Q Suppose we refer to the American Stock Exchange as AMEX .

Do you remember attending a luncheon at AMEX, the tenth floor dining room, on February 10th with a number of people listed on this letter which I am showing you, Plaintiffs' Exhibit 19-O?

A Yes, I recall this luncheon.

Q That was on February 10th, is that correct?

A I don't know. I recall this.

Q You recall that letter.

A I recall receiving this letter inviting us to a luncheon at the Stock Exchange. I just did not remember the date being February 10th per se. It probably was.

Q The date of the letter if February 5th, is that correct?

A That's correct.

Q Do you recall, before February 5th, when you first spoke to anyone at AMEX about the Blair condition?

MR. LOFLIN: Objection, your Honor. It hasn't been established that he did speak to anyone at AMEX prior to February 10th.

THE COURT: Then you could rephrase the question: Do you remember whether you spoke to anybody before that letter was received?

Q The question as his Honor put it is: Do you remember whether, between January 15th and February 5th, you spoke to anyone at AMEX regarding Blair's condition.

A I do not recall.

Q Do you recall now the reason why this luncheon was set up?

A Generally.

Q Tell us your general recollection, please.

A To discuss what the firm was trying to do in its relationship with the American Stock Exchange, as to how they could be helpful to us and we to them.

Q Before February 5th, when you received this letter, do you recall talking to anyone at AMEX and telling

them about what y[illegible] wanted the meeting for?

A At AMEX?

Q Yes.

A No, I did not go to the AMEX.

THE COURT: You did not what?

THE WITNESS: I did not go over to the AMEX.

Q I did not ask you that. I asked you whether you spoke to anyone on the telephone.

A Who worked at the AMEX?

Q Yes.

A Very probably. I don't recall.

Q You don't recall, prior to February 5th, what, if any, arrangements were made by setting up this luncheon meeting?

A No.

Q However, you do recall going to AMEX and having luncheon with a number of the AMEX officials, is that correct?

A Yes.

Q That was on February 10th.

A If you say so.

Q Not if I say so. Doesn't this letter refresh your recollection?

A Yes.

Q Okay.

At the time you had this luncheon meeting at AMEX, there were eight officials of AMEX present at that time, is that right?

A Yes.

Q Those eight official represented the top officials of AMEX, did they not?

MR. LOFLIN: I object to the form of the question.

THE COURT: Sustained.

You can ask who they were, if you want.

Q Mr. Graham was Chairman of the Board of AMEX, was he not?

A Yes.

THE COURT: Was he there?

THE WITNESS: I cannot recall whether all the members were there.

Q I am not going to go down all of these names. I don't want to waste time.

Look at all the names that are listed on that letter and their titles and tell me if those titles are correct and if the names you recognize there were present at that luncheon meeting.

A The names and the titles are correct. Whether

all of these people were at that luncheon or not, I don't know.

THE COURT: Can you remember whether any of them were there?

THE WITNESS: There were a number of people there.

THE COURT: I mean, can you remember any of them specifically?

THE WITNESS: No.

Q You were accompanied by Mr. Vanderbilt, is that correct?

A Yes.

Q And by Mr James J. Sullivan who was Executive Vice-President of Blair?

A I didn't recall that he was there.

Q Mr. Albert E. Schwabacher, Senior Vice- President of Blair & Company at that time?

A I don't recall if he was there.

Q Tell us to the best of your recollection what you told the members of AMEX and what discussion was had at that meeting.

A I don't recall the contents of the meting.

Q You don't recall anything at all that was discussed on February 10th at the AMEX luncheon meeting?

A Specifically, no.

Q Generally.

A Generally, it was the state of the market, the state of the firm, the earnings that we were having difficulties with, all generalities. Specifically I do not recall.

Q Did you tell the assembled members of AMEX about the condition of Blair & Company at that time?

A I don't recall.

Q Did you tell the assembled members of AMEX that you did not know whether or not you were in capital compliance?

A I don't recall.

Q There was a rule or regulation of AMEX, was there not, regarding capital compliance in effect at that time?

A Yes.

MR. FRIED: May I ask that the AMEX Stock Exchange Rules be produced at this time.

(Pause)

Q Did you also discuss with the assembled members of AMEX the condition of the Blair books at that time?

A I don't recall the discussion.

MR. FRIED: At this time, your Honor, I

offer in evidence the Constitution and the Regulations of AMEX only for the purpose of being able to point out at the appropriate time the particular regulations that are applicable here.

MR. LOFLIN: I am not going to object to the admission of this exhibit. I would just like Mr. Fried or Mr. Turetsky to identify the date on the cover so we know which Edition of the Rules we are talking about.

MR. TURETSKY: March 4, 1970, American Stock Exchange Constitution and Rules.

THE COURT: What is the number of it, the exhibit number?

MR. TURETSKY: I believe it is 52.

THE COURT: Well, you have to be definite. 52 is received in evidence subject to the right of counsel to object to the relevance of any particular portion of the exhibit.

MR. TURETSKY: Your Honor, I am sorry. It is 51.

THE COURT: 51?

MR. TURETSKY: Yes, your Honor.

(Plaintiffs' Exhibit 51 for identification was received in evidence)

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Q Mr. Ramsey, how long did the meeting at AMEX last on February 10th, if you recall?

A I don't know.

Q Did you have any further meetings with any employees, officers or representatives of AMEX after February 10th?

A Formally?

Q Formally, informally -- in any manner, shape or form.

A Then let me make a statement. On commuting trains, many of the people who worked on the Stock Exchange rode the commuter trains. I spoke to them off and on.

THE COURT: Is that the only contact you recall?

THE WITNESS: Yes.

Q Did you talk with anyone on the telephone with regard to the progress Blair was making on the problems that you had discussed?

A I don't recall.

Q After the January 15th meeting at the Bankers Club, did you talk to anyone besides New York Stock Exchange and AMEX regarding the problems at Blair?

A The Securities and Exchange Commission.

Q Did you talk to anyone at the Securities and Exchange Commission by telephone?

A Yes.

Q Who was the person you spoke to on the telephone?

A Kevin Duffy.

Q It is Judge Duffy now, is that right?

A That's right.

Q What did you tell Judge Duffy?

THE COURT: Well, let's call him Mr. Duffy. He was Mr. Duffy at the time. I am sure he won't mind.

Q What did you tell Mr. Duffy at the time?

A I described to him the conditions --

Q Just tell us as nearly as you can recollect what you said in your telephone conversations.

A My first meeting with Mr. Duffy was an in-person meeting.

Q When did that take place?

A I'm not sure of the date.

Q What did you tell Mr. Duffy at the time?

A I asked Mr. Rush to accompany me and possibly other people, to bring Mr. Duffy and his staff up to date completely on everything we had, including documents and everything else, and we tried to give a complete

picture to the Securities and Exchange Commission of the problems of Blair. There was also in attendance at that meeting a New York Stock Exchange employee.

Q Do you recall whether that was before April 1, 1970?

A I don't recall when it was.

Q Do you recall whether it was before the insiders were liquidated, somewhere on April 6th or 7th, 1970?

A No, sir, I don't recall.

Q Can you tell us the month in which you had this meeting with Mr. Duffy?

A No, sir, I can't.

Q You mean you can't tell us whether it was April, May, June or July of 1970?

A That's correct.

Q Now, I am going to ask you again, after the meeting on January 15th at the Bankers Club and up to April 6, 1970, did you talk to any representative of the SEC, to your knowledge?

A To my knowledge, no.

THE COURT: Does that mean that you are not sure that your talks with Mr. Duffy took place before April 6th?

THE WITNESS: Yes, your Honor.

Q Can we establish this, Mr. Ramsey: That you didn't talk to Mr. Duffy before the meeting at the Bankers Club?

A Yes.

Q That's correct, isn't it?

A That's correct.

Q Do you recall what Mr. Duffy or anyone at the SEC told you?

A Specifically, no, sir.

Q Do you recall whether you told Mr. Duffy or anyone at the SEC that you didn't know what the capital position of Blair was at that time?

A Yes, I did.

Q Do you recall whether you told Mr. Duffy and those assembled, "I think Blair's books are out of control"?

A Yes.

Q You say you can't tell us now what anyone from the SEC told you at that time?

A No.

MR. FRIED: Let me have those excerpts, please.

Q Mr. Ramsey, you were examined before trial, had depositions taken on three different occasions, do you

recall?

A Yes.

Q One was in the Vanderbilt case, one in this case and one before the Stock Exchange.

A Yes.

Q I am going to show you excerpts from your testimony in all of those three proceedings and ask you to look at that and tell us if at any time you mentioned that you had been in touch with anyone at the SEC.

MR. BROOKS: I object to this procedure.

THE COURT: I will sustain the objection. If you want to follow that approach, it would be a pretty laborious one. He would have to look through the entire set of depositions.

Mr. Ramsey, don't go through yet at this time.

MR. FRIED: All right.

Q Mr. Ramsey, from January 1970 until Blair & Company went out of business, were you in contact with AMEX?

THE COURT: Other than what he has already told us?

MR. FRIED: Yes, your Honor.

A Not that I recall.

Q Do you remember the deposition you gave in a

case called Arneil v. Vanderbilt?

A Yes.

Q You were a defendant in that action?

A Yes, sir.

Q You were also a defendant in the Vanderbilt action?

A Yes.

Q Do you remember being asked the question on page 124:

"Q During the time period of January 1970 until the demise of Blair, were you in contact with the New York Stock Exchange?

"A Continually.

"Q Were you in contact with the American Stock Exchange?

"A Constantly."

Do you remember being asked those questions and giving those answers?

A Yes.

Q Who wasthe person at AMEX that you were constantly in touch with?

A Ralph Saul.

Q Did he come to Blair & Company?

A No.

Q Did you go to the AMEX offices?

A No.

Q Did you talk to him on the telephone?

A No -- possibly on the phone.

Q Well, in what manner were you in constant touch with AMEX as you testified on that deposition?

A I saw him on the trains.

Q Did you see him every day on the train?

A Quite frequently.

Q When you did see him on the train, were you discussing the condition of Blair?

A From time to time.

Q Yesterday you stated that you asked the Stock Exchange if they would become part of your activities.

Do you recall that?

A Yes.

Q Isn't it a fact, Mr. Ramsey, that after January 15th or 16th, a representative of the Stock Exchange was in daily attendance at the offices of Blair & Company?

A I don't know whether it was daily or not. I don't recall.

THE COURT: Can you tell us what you do recall?

THE WITNESS: The Stock Exchange had someone in to oversee the situation.

THE COURT: That was after the 15th of January?

THE WITNESS: Yes.

THE COURT: Could you tell us who it was?

THE WITNESS: I don't recall his name.

Q Can I refresh your recollection by mentioning Morris Kirchenblatt?

A That doesn't refresh my recollection.

Q Mr. Ramsey, I ask you if you testified in the case of Foley v. Vanderbilt in a deposition on October 4, 1975,as follows, page 88:

"Q You told us what you told Mr. Arning in January of 1970. What did Mr. Arning tell you at that meeting?

"A That he would send people into Blair & Company from the New York Stock Exchange et cetera and go over the findings themselves and see whether they could help us out, whether we were in compliance and whether we were not and give us as much help from the New York Stock Exchange as possible.

"Q To do what?

"A To try to find out, number one, whether we were in compliance with Rule 325 and to a further extent to find out the degree of deficit if they existed.

"Q Did they do that?

"A Yes, they sent people in.

"Q As a matter of fact, didn't they also send in a gentleman whom they designated to be in daily attendance at Blair to supervise Blair's activities?

"A At some point in time it was. Whether it was at that particular point in time on a daily basis, I don't recall. I would say, yes, they were in daily contact with Blair in-house on a daily status from that point on.

"Q To put it in different words, they designated to sit in with Blair and to watch Blair, isn't that right?

"A Yes.

"Q How early in 1970 did the Stock Exchange do this?

"A I don't recall.

"Q In any event, was it in January and February?

"A Yes.

"Q From that point on until the time you left, did the Stock Exchange always have someone at Blair?

"A Yes."

Do you remember being asked those questions and making those answers?

A Yes, sir.

Q Do you also remember being asked these questions and making the following answers:

"Q Do you recall the name of the gentleman who was there?

"A I think there were several.

"Q What did they do?

"A Work with the Operational Divison.

"Q Watching figures, didn't they, in substance?

"A Yes.

"Q Kept watching to see whether or not there was any change in the compliance or non-compliance of Blair, isn't that right?

"A Yes."

Do you remember being asked those questions and making those answers?

A Yes.

Q Now, do you have any present recollection as to whether or not you saw and talked to a representative ofthe New York Stock Exchange on a daily basis from January 16th or thereabouts until, say, April 3rd?

A Did I personally?

Q Yes.

A No. I don't recall.

THE COURT: You do not recall that you did or you do not recall whether you did?

THE WITNESS: I don't recall whether I did,

but I'm sure in any case I would not have met with them on a daily basis.

THE COURT: Would you say you met with them regularly?

THE WITNESS: Yes, but --

Q Let's go to something else, Mr. Ramsey.

Do you remember yesterday you were talking about the withdrawal of funds by Mr. Vanderbilt -- and I mean capital funds -- from Blair & Company?

A Yes.

Q Do you recall any discussions you had with Mr. Arning about withdrawing funds?

A No, sir.

Q Do you remember being questions -- Stock Exchange transcript, page 71:

"Q Do you recall a specific instance concerning the discussion of the withdrawal of the secured demand notes, whom you talked to?

"A My best recollection is that it was Lee Arning as to the question of what could be done as far as holding on to an SDN account, and if further I had the right to hold his account or did I have the obligation to release it.

"My understanding was that I had to make my

own decision, in that there was nothing to say, that I could not release the money on a routine six months basis. There was no formal decision that I asked for. I asked for a letter from the Exchange to please tell me that I could not pay the money out.

"The letter wasn't as strong as I would like to see it inasmuch as it said, 'Without Exchange approval'. I wanted it to say that I could not under any conditions pay money out."

Do you remember being asked those questions and giving those answers?

A Yes.

Q Did you receive the letter?

A Yes.

Q I show you Plaintiffs' Exhibit 51-A for identification and ask you whether that is the letter that you received from the New York Stock Exchange regarding withdrawal of funds?

A Yes.

MR. FRIED: I offer that in evidence.

MR. BROOKS: Your Honor, I would like to inquire as to the purpose for which it is offered.

THE COURT: Well, if it is relevant, I do not see that we have to go into that.

MR. BROOKS: That's my problem. I don't see that it is relevant.

THE COURT: That is another matter. May I take a look at it, please.

(Pause)

THE COURT: I think its material is such that it would be relevant and Mr. Fried would be relevant for it. It reflects on whether the Stock Exchange performed its responsibilities -- and I will describe those responsibilities to the jury at a later time -- as should have been performed or not.

I assume that is the basis for it.

MR. FRIED: Yes, sir.

(Plaintiffs' Exhibit 51-A for identification was received in evidence)

MR. FRIED: May I read this letter, your Honor?

THE COURT: Yes.

(Mr. Fried read to the jury from Plaintiffs' Exhibit 51-A in evidence)

Q Mr. Ramsey, do you know what period of time elapsed between the time you requested this letter and the time you received it?

A No, sir.

Q By the way, did you have a six-month routine withdrawal provision?

A Yes.

Q What was that six-month withdrawal provision that you were talking about?

A I don't recall it in its entirety but I recall a period of time of six months had to elapse before it could be released once it was requested.

Q Was that six-month routine withdrawal provision something that Blair & Company imposed?

A Yes.

Q Do you recall how much money had been withdrawn by Mr. Vanderbilt during the year 1969?

A No, sir.

Q I show you a copy of a letter, dated July 2, 1970 and ask you if that refreshes your recollection as to withdrawals by Mr. Vanderbilt during the year 1969?

THE COURT: Does it refresh your recollection?

MR. FRIED: The letter is marked 51-B for identification, your Honor.

THE WITNESS: I beg your pardon, Mr. Fried. What is your question?

Q Will you look at that letter, particularly the figures that are mentioned there. I ask you whether

there was a withdrawal by Mr. Vanderbilt on April 11, 1969, of $500,000?

A I don't know.

MR. BROOKS: Your Honor, I am going to object to counsel's use of the word "withdrawal". The letter clearly shows that it is a repayment of a debenture that came due.

THE COURT: In any event, Mr. Fried, the letter is not in evidence. You first put it to him to see if it refreshed his recollection as to whether Mr. Vanderbilt withdrew.

Does it refresh your recollection?

THE WITNESS: No.

Q Do you recall receiving that letter in July of 1970, Mr. Ramsey?

A No.

MR. FRIED: I offer that in evidence.

MR. BROOKS: The exhibit stamp has blotted out the addressee on our copy. May we know who the addressee is?

MR. FRIED: The Board of Directors of Blair & Company, Inc., 20 Broad Street, and copies were sent to Mr. Bishop, Mr. Daley of Mudge, Rose and others.

THE COURT: This is a letter to Blair, is that

right?

MR. FRIED: Yes, your Honor.

MR. BROOKS: No objection.

THE COURT: All right.

(Plaintiffs' Exhibit 51-B for identification was received in evidence)

MR. FRIED: May I just read one portion of this letter. This is a letter dated July 2, 1970, on the letterhead of Cravath, Swain & Moore.

Q Do you know what Cravath, Swain & Moore is?

A Yes.

Q It's a large law firm?

A Yes.

(Mr. Fried read to the jury from Plaintiffs' Exhibit 51-B in evidence)

Q Looking at that letter, does it refresh your recollection as to whether payments were made as indicated in Plaintiffs' Exhibit 51-B?

A No, sir.

Q Do you know of your own knowledge whether it was a fact that Mr. Vanderbilt had withdrawn or had been paid all of the amounts that he advanced on tl subordinated debenture notes?

A I don't recall the amounts. I know that some

money was repaid to Mr. Vanderbilt.

Q Mr. Ramsey, isn't it a fact that Blair & Company was in the process of doing a partial liquidation beginning with January of 1970?

MR. BROOKS: I object to the form of the question.

THE COURT: Overruled.

A Would you repeat the question?

THE COURT: Will you read back the question.

(Question read)

A No, sir.

Q Was it in the process of trying to cut down expenses wherever possible?

A Yes, sir.

Q And did you term that a voluntary program?

A Yes.

Q And in the course of that voluntary program, to cut down expenses, did you sell or close any offices of Blair & Company?

A Very probably.

Q Do you recall being examined on October 4, 1972, in the Vanderbilt case and being asked this question on page 109:

"Q Were you selling offices or closing offices?

"A I had probably during that period of time closed some offices, yes.

"Q Is it your best recollection that you did?

"A I would say yes."

Do you remember being asked those questions and making those answers?

A Yes.

Q Did you also stop hiring registered representatives in that process of cutting down expenses?

A I don't recall.

MR. BROOKS: Your Honor, I am going to request that counsel read the bottom five lines on page 108 which immediately precede the question which he has read, which casts doubt on Mr. Ramsey's ability to --

THE COURT: Don't characterize it. Would you read them?

MR. FRIED: I would be glad to do it, your Honor.

"Q Did there come a time in early 1973 on whether the Stock Exchange told you that you could not maintain certain operations?

"A I that a point in time did come.

"Q When was that?

"A I don't recall what month it was.

"Q Was it early 1970

"A I don't recall, but a voluntary program was in effect and had been in effect. That was more what the report in substance were in conversations with Mr. Arning, is what we were doing in effect coordinating to outlines that we were submitting as to our savings and commodities that were to be put into effect --

"Q Early in 1970?

"A I am sure a list of all the commodities is available somewhere. We turned in various lists to the Exchange as to what and when we did it.

"Q Did there come a time in early 1970 when you discussed with the Stock Exchange and reached an understanding as to the liquidation of the subordinated position of the insider group?

"A Yes, an agreement was reached with the Stock Exchange as to the insiders prior to the outsiders, at some two or three months before the outsiders."

Do you remember being asked those questions and making those answers, Mr. Ramsey?

A Yes.

end t3

Q Did you have any discussion with any representatives of the Stock Exchange regarding the special trust fund?

I'm sorry. I withdraw that.

Mr. Ramsey, you stated before that you did not know the extent of the moneys that were paid to Mr. Vanderbilt during the year 1969, is that correct?

A Yes.

Q Do you remember being asked these questions and making these answers, Stock Exchange transcript 59:

"Q In other words, from September 1969 to April 1970, to the best of your knowledge, was any capital withdrawn from the firm?

"A Yes.

"Q To what extent, do you recall?

"A Mr. Vanderbilt withdrew approximately three million, to the best of my knowledge."

Do you remember being asked those questions and making those answers?

A Yes.

Q Now with regard to --

MR. BROOKS: Your Honor, again I am going to request that counsel read on to the bottom of that page, to put it in context.

MR. FRIED: I'll read anything you want.

"Q At what point was this, sir, do you recall?

"A I think the last of the -- I'm not sure at what stage it went out. I think the last of it went out approximately in November 1969.

"Q Other than Mr. Vanderbilt, did anyone else withdraw capital from the firm?

"A Not to my knowledge."

Do you remember being asked those questions and making those answers?

A Yes.

Q Mr. Ramsey, I direct your attention now to any discussion you had regarding the special trust fund of the New York Stock Exchange. First of all, before I ask you those questions, will you explain what you understand that special trust fund is about?

A There was -- a fund was set up by the --

MR. BROOKS: I am going to object to the question. What the witness' understanding is is not probative or relevant.

THE COURT: It could be. But I don't think that is what Mr. Fried really wants. I think he wants the jury to know what the fund was.

Is that right?

MR. FRIED: That's right. I just merely want an explanation.

THE COURT: Do you know what the New York Stock Exchange special trust fund was?

THE WITNESS: Specifically, I do not.

Q Do you remember having any conversation with Mr. Arning about the special trust fund?

A Yes.

Q Do you remember what you told Mr. Arning and what you discussed about the special trust fund?

A At some point in time, I do not recall when, I wondered at the possibility of making a loan from the special trust fund.

THE COURT: You mean you wondered out loud?

THE WITNESS: Yes, with Mr. Arning, as to the possibilities of making a loan from the special trust fund.

THE COURT: That is, Blair borrowing from the fund?

THE WITNESS: Yes.

Q Do you remember being questioned on December 11, 1972 in this case, page 35:

"Q Do you recall whether there was a conversation about the general subject of the effect on the trust fund of Blair's going out of business, whether you raised the

issue or whether they raised the issue?

"A The conversations took place about it, yes. I don't recall who they were with necessarily.

"Q Could they have been with Mr. Arning?

"A Could have been.

"Q Could it have been with Mr. Stock?

"A I just don't recall who they were with offhand.

"Q But you --

"A I am reasonably sure that the conversations were that the subject would have been discussed."

Do you remember being asked those questions and making those answers?

A Yes.

MR. BROOKS: Your Honor, may I again ask counsel to read the next two lines?

THE COURT: All right.

MR. BROOKS: At page 36.

MR. FRIED: By Mr. Brooks:

"Q Do you recall when?

"A No, I do not.

"Q When he is talking about the witness, it would have been a time frame of one to three months, I would think. You are saying from January to April?

"A Yes. I would say it probably had to come under

discussion.

"Q Would it have been with any one of Messrs. Arning, Stock, Deignan or Bishop? Would it have been with any one of those four?

"A Yes."

MR. BROOKS: I am going to move to strike the last two answers about "would it have been."

MR. FRIED: You asked me to read it.

THE COURT: I don't know that he asked you to read quite that far.

The objection is overruled and let's go on to the next item.

Q Do you also remember having discussions with the Stock Exchange regarding the Thomson & McKinnon merger?

A Yes.

Q Were you told at that time that if the Thomson & McKinnon merger went through that it would subject the trust fund --

MR. BROOKS: Objection to the form, your Honor.

THE COURT: Sustained. You may ask him what he was told.

Q Do you recall having a discussion with the Stock Exchange at the time the Thomson & McKinnon merger was discussed regarding the effect on the special trust fund?

A Yes.

Q Do you recall what that discussion was about, Mr. Ramsey?

A The discussion was about whether or not a merger with Thomson & McKinnon would affect the special trust fund.

Q What were you told about how it would affect the special trust fund?

A That there was a possibility that it could.

Q To the extent of three quarters of a million?

A I don't recall the exact amount.

THE COURT: Were you told in what manner it could affect the fund?

THE WITNESS: Yes. It could have depleted the special trust fund by a certain amount.

THE COURT: Why would that be, as you understood it?

THE WITNESS: If certain obligations could not be met, then the special trust fund would have to meet those obligations. Therefore it would deplete the fund.

BY MR. FRIED:

Q Mr. Ramsey, do you recall when discussions with Thomson & McKinnon took place with regard to a possible merger?

A Mid-summer: June, July, August 1970, somewhere in there; July, August 1970.

Q You had a number of discussions with Thomson & McKinnon about a possible merger, did you not?

A Yes.

Q Thomson & McKinnon is still in business today?

A Yes.

Q One of the large firms in New York City?

A Yes.

Q Did you reach an agreement in principle with Thomson & McKinnon for a merger with Blair & Company?

A In principle, yes.

Q And after that agreement in principle was reached, what happened, do you recall?

A Yes. Further investigation made it impossible to consummate a merger between the two firms, based on a number of items that came into the picture at that time.

Q Isn't it a fact that the New York Stock Exchange objected to the merger?

MR. BROOKS: Objection to the form of the question, your Honor.

THE COURT: Do you know? What was the Stock Exchange's reaction to the proposal, do you know?

THE WITNESS: I think they would have been very

happy at the merger, but not at the terms.

THE COURT: Don't tell us what would have been. Did they express a point of view to you?

When you say they would have been happy, you are suggesting or guessing how they felt. Did they tell you how they felt?

THE WITNESS: We could not do the merger under the circumstances as outlined.

Q By the way, did you talk to any attorneys representing any of the Exchanges in the last few weeks?

A Yes.

Q Who were the attorneys you spoke to?

A I spoke to Mr. Brooks.

Q Anybody else?

A Yes.

Q Will you tell us who they were?

A I think I spoke with Mr. Reilly very briefly.

Q Did you talk to any attorney representing AMEX?

A Yes.

Q Did they go over the depositions with you?

A In one area, yes.

Q In any event, you did discuss your testimony in this case with them.

A Yes.

Q Do you recall that there was a meeting called by the Stock Exchange which you described as a turkey shoot?

A Yes.

Q What did you mean by the expression 'turkey shoot'?

A It was concerning the possibility of selling off some of the branches of Blair & Company to other brokerage firms.

Q Do you recall that you were working on a merger between the firm of Blair and Thomson & McKinnon whereby the total assets of Blair were to be taken over by Thomson & McKinnon?

A Yes.

Q And did you discuss that with the Stock Exchange?

A Yes.

Q Was that merger turned down by the Stock Exchange as unworkable?

A Yes.

THE COURT: Was that a second plan or was that the same plan you were talking about earlier?

THE WITNESS: A variation of the first.

THE COURT: All right.

Q As a matter of fact, you received a telephone call on Sunday night at ten o'clock, did you not, that a

meeting was going to be called by the Stock Exchange the next morning?

A Yes.

Q And you didn't know the purpose of the meeting, is that correct?

A Yes.

Q When you went to the meeting, what happened at that meeting?

THE COURT: May we have some approximate date as to when this meeting occurred?

THE WITNESS: I don't recall the date.

Q In the summer of 1970?

A Yes.

THE COURT: Okay.

Q When you went to that meeting, did you find virtually every major member firm of the Stock Exchange in attendance?

A Some of the largest were in attendance, yes.

Q What happened at that meeting, if you can recall, Mr. Ramsey?

A This was an attempt to possibly get bids on the branch offices of Blair & Company as they presently existed.

Q At that meeting was there a complete profile of the firm of Blair & Company made available to all the

representatives of the various members of the Stock Exchange?

A The branch system, certainly.

Q And isn't it a fact, when that meeting broke up at lunch, not one single firm had made a bid?

A I don't recall any.

Q Do you remember making this answer, page 134 of Vanderbilt:

"Needless to say, no one made any bid, and at a luncheon break following, no one making a bid, virtually half of the people in the room went back to their respective offices and called the branch they wanted to, in order to pick up what they might. But no one made a bid. It was quite obvious they would not.

"I countered that move after talking to one or two of the people that attended the meeting that morning that said they would not be back for the afternoon session that would put out a bid. I sent a wire to every manager at Blair & Co. not to count on any kind of a telephone call from any other member firm, to please try to keep their branches respectively together and I would still try to work some kind of merger arrangement out for the best interests of the accounts involved and the best interests of the firm.

"As a result, there were no bids on any branch. Obviously there would not be. I referred to that as a turkey shoot'."

Do you remember making that answer?

A Yes.

Q So you were still anxious to go ahead with the merger even despite this meeting.

A Yes.

Q Was this meeting a surprise to you?

A Yes.

Q You did not know about it until the night before, is that right?

A Correct.

Q As a matter of fact, the night before, when you received the telephone call, you didn't know what the meeting was going to be about the next day.

A Correct.

Q When you talked about "turkey shoot," you meant that you were surrounded by hunters and there was an open season, is that what you said?

A Yes.

Q Did you protest?

A Probably.

Q Do you remember whether you spoke to Mr. Bishop

and protested about these activities of the Stock Exchange?

A I probably protested.

Q You say "probably." Don't you recall, Mr. Ramsey?

A I don't recall the language, no.

Q Do you remember being asked these questions and making these answers:

"Q Did you tell Mr. Bishop what you thought of this thing that he had done? That is, did you protest?

"A Yes.

"Q And did you ask him not to go through with this when you learned what was going on?

"A Yes.

"Q Did he at any time indicate to you that he planned to do this?

"A No.

"Q Did he know that you were in active negotiation with Thomson & McKinnon?

"A Yes."

Do you recall being asked those questions and making those answers?

A Yes.

Q (Reading)

"Q If you recall, Mr. Foley offered to help you

raise the outside capital that Thomson & McKinnon needed.

"A Yes.

"Q What was the effect of what Mr. Bishop did in a destruction of your efforts to merge and save the subordinated noteholders?

"A During the same luncheon break on Monday, I referred to it at the time, the meeting with the Stock Exchange and all the member firms. I received a call from the president of Thomson-McKinnon, who said that obviously, as a result of that morning's meeting, that our discussions were at an end because I had nothing that I could deliver to Thomson & McKinnon as a result of that meeting, which was obviously true at that point.

"Q Up to that point had negotiations been going on actively with Thomson-McKinnon?

"A Yes.

"Q So far as you were able to see, had you received what in effect amounted to an agreement in principle to a deal, bearing in mind, of course, a lot of details remained to be worked out with Thomson-McKinnon?

"A I beg your pardon?

"Q Had you immediately prior to the turkey shoot reached an agreement in principle with Thomson & McKinnon?

"A We had reached an agreement in principle.

"Q And what was left then was working out of papers?

"A The finances."

Do you recall being asked those questions and making those answers?

A Yes.

Q Have you talked with any representatives of the Stock Exchange in the last few weeks, Mr. Ramsey?

A No.

THE COURT: Rather than Mr. Brooks and Mr. Reilly?

MR. FRIED: I asked about attorneys before. Now I'm asking about representatives of the Stock Exchange.

THE COURT: All right.

THE WITNESS: No.

Q Do you recall whether that meeting, the turkey shoot, occurred before or after the outside subordinated lenders were liquidated, or sold out?

A I don't recall.

Q Do you recall having a meeting sometime in August of 1970 with the outside subordinated lenders?

A Yes.

Q Do you recall what you told the outside subordinated lenders at that time?

A No.

Q Do you recall whether, by the time that meet no had come about, I believe it was August of 1970, you had told the outside subordinated lenders that the inside subordinated lenders' position had been liquidated back in April?

A I don't recall.

Q Isn't it a fact that you did not tell anybody at the meeting of the outside subordinated lenders in August that the insiders had been liquidated back in April of 1970 ?

A I don't recall.

Q Do you remember stating in your deposition in the Vanderbilt case, page 135:

"Eventually I was successful in raising some outside capital for Thomson-McKinnon. So in effect we did most what we were trying to do so far as the protection of customer's accounts. However, what was lost to the security man, noteholders and others, stockholders, et cetera, was receiving 20 percent of the stock of Thomson-McKinnin, which would have been worth considerably more by this time, it would have been worth considerably more then, had this been allowed to go ahead. Also, it would have saved the Stock Exchange, in my opinion, a great deal of

money."

Do you recall making that answer?

A Yes.

Q Now, does that refresh your recollection as to whether or not the outsiders, the position of the outside subordinated lenders,had not yet been liquidated?

A No, sir, I don't recall.

MR. FRIED: I have only a few more questions and I'll be through.

Q The Capital Management Corporation was a subsidiary, a wholly-owned subsidiary, was it not?

A Yes.

Q And it is, I believe it is called, a Rule 321 subsidiary.

A I'm not sure.

THE COURT: Referring to what rule?

MR. FRIED: Rule 321, New York Stock Exchange.

Q There was testimony in this case that that was a corporation that looked for tax shelters. Do you recall that?

A Yes.

Q And at one time did Blair have all of the capital stock of the Capital Management Corporation?

A I believe that's correct.

Q Who are now in control of the Capital Management Corporation, do you know?

MR. BROOKS: I object to the question, your Honor, who are now in control.

THE COURT: At the present time?

MR. FRIED: Yes.

MR. BROOKS: It was six years ago.

THE COURT: I do not know what the relevance is. Subject to connection. If you know, you can answer it.

A I don't know.

Q Was Mr. Vanderbilt connected with the Capital Management Corporation?

MR. BROOKS: Same objection.

THE COURT: I know he said he did not know.

MR. FRIED: He said he didn't know who was in control. I am asking who is connected with it specifically.

A I don't know that there is even a Capital Management Corporation. But I am not sure, to answer your question.

Q Has the name of Capital Management been changed to Group Investors?

MR. BROOKS: Same objection to the relevance.

THE COURT: It has to be subject to connection.

Q Isn't it a fact that Mr. Arning and Mr.

Vanderbilt obtained the voting rights to the stock in Capital Management Corporation from Blair & Company?

A I don't recall that.

THE COURT: All right. The witness does not seem to recall, besides which the subject is at least of questionable relevance.

Q Do you remember being asked these questions and making these answers, Stock Exchange Report 90:

"A In an effort to raise additional capital for Blair & Co., we were exploring the possibilities of selling the portfolio of stocks owned by Blair & Co. to a potential buyer, and among the potential buyers was Captail Management.

"Q Who were the others?

"A We asked certain individuals if they would be interested in making a bid on these stocks.

"Q Do you recall their names?

"A I think Mr. Beringer, Mr. Ireland.

"Q A Dr. Foley?

"A I don't know; there may have been many others that I am not aware of.

"Q Please continue.

"A In an effort to see if Capital Management could be" --

MR. BROOKS: I am going to object to the reading of this testimony on the grounds of relevance.

THE COURT: May I see the transcript?

MR. FRIED: Yes, your Honor.

THE COURT: Will you indicate how far you expect to read it? Can you indicate how far, before I look at it, you expect to read it?

MR. FRIED: Just down to these -- these lines are not numbered, your Honor, but down to --

THE COURT: The bottom of the page?

MR. FRIED: Two lines before the bottom.

(Handing)

THE COURT: I will sustain the objection.

Q Do you know what if any consideration was paid to transfer voting control to Mr. Vanderbilt of Blair & Company?

MR. BROOKS: Objection.

THE COURT: Sustained.

MR. FRIED: I have just one more question.

Q I want to take you all the way back to the time of the merger between Blair & Company --

THE COURT: And Schwabacher?

MR. FRIED: What is that?

THE COURT: Blair and Schwabacher?

MR. FRIED: Blair and Schwabacher.

Q Do you recall the reason for Mr. Lendman, president of Blair, resigning?

A Generally.

Q Was the reason because of the Schwabacher-Blair merger?

A No.

Q Was that a reason he gave for resigning?

A No.

Q Page 115:

"Q Mr. Ramsey, would you say that Mr. Lendman became cognizant of the seriousness of the Schwabacher situation and decided to leave for that reason?

"A I would say it would have been a very serious consideration to him."

Do you remember being asked that question and making that answer?

A Yes.

MR. FRIED: I could take another five or ten minutes, your Honor, and I'll be through.

THE COURT: Do you prefer to continue or not?

MR. FRIED: Shall I continue? All right.

Q Mr. Ramsey, did you receive drafts of the minutes

of the board of directors sometime in June of 1960 from Mr. Hepburn? I'm sorry. 1970.

A I don't recall.

Q Look at Plaintiffs' Exhibit 37 for identification and tell me if you received those papers or a copy of those papers from Mr. Hepburn.

A I don't recall. I would assume that I did.

Q Now will you look at the minutes of the meeting of the board of directors of Blair & Company on April 6, 1970?

MR. BROOKS: Your Honor, I am going to object because these are only drafts, according to the first page, and the final minutes are to be prepared by the attorneys.

THE COURT: All that has happened so far is that the witness has been asked to look at the document.

MR. BROOKS: Counsel told him they were minutes of Blair & Company and they are not.

THE COURT: Look at the document.

A April what?

Q April 6, 1970.

THE COURT: I remind the jury that these papers have not been established as what they purport to be yet by any witness.

A Yes.

Q Did you have a meeting of the board of directors on April 6th of Blair & Company?

THE COURT: Don't answer that question onthe basis of the paper before you alone, Mr. Ramsey.

A I don't know what date we had our meeting.

Q So you have no recollection?

A Of April 6th? No, sir.

Q Does that document refresh your recollection?

A No, sir.

Q Do you recall receiving that bundle of papers from Mr. Hepburn?

MR. BROOKS: He has answered that already. He said he didn't.

THE COURT: If counsel would stop testifying, I will allow Mr. Ramsey to answer the question.

A I said I would have assumed I would have received these from Mr. Hepburn.

MR. FRIED: I offer it in evidence, your Honor.

MR. BROOKS: Objection.

THE COURT: The mere fact that they have been received by the witness does not authenticate them as minutes of the organization, if that is what they are offered to be.

I am sorry, I will have to sustain the objection at the present time.

Q Mr. Ramsey, do you have any recollection at all of the resolution which was adopted at the meeting of the board of directors of Blair & Company to liquidate the inside stockholders?

A I don't recall the resolution. I know that we had a -- we had to have a resolution to liquidate.

THE COURT: And you do recall that you did liquidate?

THE WITNESS: Yes.

THE COURT: Is that the only thing you do not recall, the language of the resolution?

THE WITNESS: The language of the resolution nor exactly when it took place.

Q Do you recall when it happened?

A No, I don't.

Q Does looking at the document which I gave you, Plaintiff's Exhibit 57 for identification, refresh your recollection --

A No, sir.

Q -- as to the date when that meeting was held?

A No.

THE COURT: Is there any dispute about that date?

MR. BROOKS: We don't dispute that during the week beginning April 6th -- but not on April 6th -- later in that week -- the collateral secured demand note accounts of members and allied members in part were liquidated by Blair.

MR. FRIED: I am talking about an adoption of a resolution on April 6th of the board of directors to liquidate the --

THE COURT: I thought that stipulation that Mr. Brooks has made would obviate the need to establish the resolution itself.

Will you read Mr. Brooks' stipulation.

(Record read.)

MR. FRIED: Very well.

Q Mr. Ramsey, let me see if I can refresh your recollection:

Do you recall that a meeting in April was recessed for the next day: April 7th?

A No, sir.

Q Do you recall that on April 7th no quorum was present, and you adjourned until April 8th?

A No, sir.

Q Do you recall that on April 8th on quorum was present, and you adjourned until April 9th?

A No, sir.

Q Do you have any recollection at all of what action the board of directors of Blair & Co. took with regard to the liquidation of the inside holders in April of 1970?

A I would recollect that a resolution would have to be made, but I don't recollect when or what it contained.

Q Do you know whether that resolution was adopte. at the direction of the New York Stock Exchange?

A No, sir.

THE COURT: Do you mean it was not, or do you mean you don't recall?

THE WITNESS: I don't recall.

Q I am going to ask you to look at two more documents. The first is Plaintiffs' Exhibit 52 for identification. I will ask you if you recall receiving that, Mr. Ramsey.

A Yes.

MR. FRIED: I offer that in evidence.

MR. BROOKS: No objection.

THE COURT: Received.

(Plaintiffs' Exhibit 52 for identification was received in evidence.)

xxx

THE COURT: May I see it after it has been marked, please.

(Pause.)

THE COURT: Thank you. You may proceed.

MR. FRIED: May I just read this, your Honor?

THE COURT: Yes.

MR. FRIED: It is a letter on New York Stock Exchang stationery, addressed to James B. Ramsey, dated April 28, 1970.

(Mr. Fried read to the jury from Plaintiffs' Exhibit 52 in evidence.)

Q Do you remember meeting with Mr. Arning on April 28, 1970, Mr. Ramsey?

A I remember meeting with Mr. Arning.

Q And who is the "Ollie" referred to there?

A Mr. Oliver Vanderbilt.

Q And "George"?

A George Morpurgo.

Q Do you remember what the discussion was on that day regarding the affairs of Blair & Co.?

A Not specifically.

Q Just one last document.

I show you Plaintiffs' Exhibit 53 for identificatio and ask you if you recognize that document.

A I don't recall it.

Q You don't recall ever seeing it?

A No, sir.

MR. FRIED: Thank you. That is all. I have no further questions.

THE COURT: All right. Thank you, Mr. Fried.

We will take a recess at this time.

(Recess.)

THE COURT: Mr. Brooks?

THE WITNESS: Your Honor, may I make a request?

I have a Government luncheon at approximately twelve-thirty that I have not been able to change. I would like to leave as soon as possible around twelve thirty, until at the latest a quarter after two.

THE COURT: If you leave at twelve-thirty, will that be convenient?

THE WITNESS: Yes, sir.

THE COURT: All right.

MR. BROOKS: Excuse me, your Honor. Mr. Ramsey has testified so often and at so many places, it is difficult to gather them all together.

MP 5 Ramsey - cross

CROSS-EXAMINATION

BY MR. BROOKS:

Q Mr. Ramsey, were you subpoenaed by the New York Stock Exchange to give testimony at this trial?

A Yes.

Q Do you recall Mr. Fried questioning you about your meeting with myself, Mr. Reilly and counsel for the American Stock Exchange?

A Yes.

Q -- to go over the deposition testimony?

A Yes.

Q Did that help you refresh your recollection in any way as to the events?

A In some cases. Not in all.

Q Have you testified truthfully today?

A Yes.

MR. FRIED: I object to that, your Honor. That is for the jury to determine.

Q Have you tried --

THE COURT: Of course it's for the jury to determine but one of the things they can determine is whether they believe what he just said.

Q Have you tried to recall, to the best of your ability, the events that happened in 1970?

A Yes.

Q Have you tried to recall to the best of your abilit the --

MR. FRIED: Your Honor, this is all leading.

THE COURT: Well, this is cross-examination.

Q Have you tried to recall to the best of your ability the testimony you gave at depositions in 1971 and 1972, which Mr. Fried was reading to you?

A Yes.

Q You testified at the trial transcript, page 666, yesterday, that your entire background before you became the president and chief executive officer at Blair was in the sales area of the business; is that correct?

A Yes, sir.

Q What other area of the brokerage business is there?

A Operations, primarily.

Q Are those two commonly accepted divisions of a brokerage business?

A Yes.

Q Now, after you became the chief executive officer at Blair, upon whom did you rely to run the operations part of Blair's business?

A The chief operations officer.

Q Who was that?

A At what time?

Q Well, at the time you took over.

A At the time I took over, it was Mr. Benjamin Hepburn However, Mr. Hepburn became ill and was out for some period of time. Various other people were involved in operations. After the merger with Schwabacher, it became Mr. Raymond Hovenstadt.

Q Did Mr. Hepburn assume any duties after he became ill?

A Yes.

Q He returned to work?

A Yes.

Q In what capacity did he function after his illness when he returned to work?

A He worked for me, in the office of the president, working with operations.

Q You have mentioned a Mr. James Rush. In what capacity did he serve at Blair & Co.?

A He was the head of the bookkeeping operations.

Q Was it under his jurisdiction that the computation of Blair's net capital fell?

A Yes. However, he worked with the director of operations, Mr. Hovenstadt.

Q Mr. Ramsey, on the various special operations

questionnaires that Mr. Friedman has had admitted into evidence, on which your signature appears, there is always the signature of another officer of Blair under yours. Sometimes it is Mr. HOvenstadt; sometimes it is Mr. Rush.

Did you, yourself, prepare any special operations questionnaire at Blair?

A No, sir.

Q Did the other gentlemen who signed these special operations questionnaires prepare or have prepared under their direction the questionnaire?

A Yes.

THE COURT: Actually, they prepared the answers to the questions.

MR. BROOKS: Yes.

Q Have you ever prepared a special operations questionnaire or the answers to a special operations questionnaire?

A No.

Q Did you have a financial interest or investment in Blair & Co.?

A Yes.

Q How much?

A A little over 200,000.

Q What part of your net worth was that sum?

A All of it.

Q Now, do you recall the discussion you had with Mr. Fried about the Schwabacher merger?

A Yes.

Q Let me back up for a few minutes.

I take it there was a vote of some sort at Blair as to whether to merge with Schwabacker or not; is that correct?

A Yes.

Q How did you vote?

A I voted to merge.

Q What were the reasons given at the discussions that preceded that vote as to why a merger with Schwabacher was desirable?

A May I back up?

Q Please do.

A There had for some time been a discussion about a merger with a firm that would make us a national organization. We had -- our offices ran approximately to mid-continent. We had a desire to accomplish a merger that would make us a national firm and not regional to any degree. So therefore we were looking for a merger, and we did consider several firms as possibilities. The Schwabacher merger was one that gave us the desired move to the West Coast and thus a

national reputation. That was the primary reason, was the enlargement -- it was also our feeling that in time to come the large firms and only the large firms would probably be better able to withstand the pressures of the business, and we wanted to become as large as possible.

Q You testified that you took two looks at Schwabacher. After the first look you didn't wish to merge and did not merge. After the second look you wished to merge and did merge.

Was there any examination or review conducted by any professional organization of Schwabacher in that interval upon which you based your decision that it would be desirable to merge on the second round?

A Yes. Now my recollection is that there were two auditing firms involved in looking it over: Arthur Young and Arthur Andersen.

Q You mean they made a review of Schwabacher?

A I don't know the extent, whether it would be termed a review. Yes; they worked -- reviewed areas at least that we were very interested in.

Q Do you recall the auditing firms that did the review? You said there were two firms.

A Arthur Andersen and Arthur Young were the two involved. There may have been others. I don't know.

Q You answered in response to Mr. Fried's questions concerning the Schwabacher merger that you had discussed the merger with the Stock Exchange. Do you recall that?

A Yes.

Q Had you also discussed the merger with the Securiti & Exchange Commission?

A Yes.

Q Mr. Fried also discussed with you the conversion of Blair's accounting system to the Midwest Stock Exchange system.

A Yes.

Q Do you recall the date on which you converted to the Midwest system?

A No, sir.

Q I believe you testified in response to Mr. Fried's question that it was some time in November, give or take two weeks either way.

A That's correct.

Q Is that still your recollection?

A Yes.

Q Was November a profitable month for Blair in 1969?

A Yes.

Q Did you consider, by November of 1969, that whatever problems that had existed at Schwabacher in the past

had been resolved?

A In the main.

Q What were the reasons that Blair converted to the Midwest Stock Exchamge Service system in November of 1969?

A We were about to double, theoretically double our present volume. It made less sense to the committee in charge of reviewing this to go back to or try to go back to or try to maintain a by-hand operation, when with that type of volume a computerized operation would definitely be needed.

It was also felt that inasmuch as the Schwabacher system had already -- by that time felt comparatively at ease on the Midwest system and had spent a number of months in doing it, that it was also -- would also be more readily feasible to put it onto a computer system than to take it off a computer system and put it on a by-hand system.

Q Did you know whether one system or the other was cheaper?

A Yes. I think the investigation reported that it would be cheaper to go to the computerized system.

Q By that do you mean the Midwest --

A The Midwest system.

Q When you had your discussions with the Midwest executives concerning going onto their system, can you tell me what they told you?

A There had been a problem relating to the Midwest system in that many other firms were experiencing difficulties as far as handling their volume of business at that particular time. Some other firms had gone on the Midwest system, and their personnel had been pretty strongly utilized.

One of the difficulties in doing it was whether or not a proper amount of personnel would be available to handle uroconversion. I was assured that a number of personnel would be made available and there would be plenty of personnel to accomplish this.

Q Who assured you of that?

A A committee was formed to study the whole conversion system, whether or not to convert or stay as we were, and the principles involved in the system, and that committee and I personally talked to one or two people at the Midwest, but primarily I was relying on a committee report --

THE COURT: The committee was of Midwest personnel or --

THE WITNESS: No. Blair personnel. That was made up partially of Schwabacher and partially of Blair, who were in touch with the Midwest people.

Q So was it the Midwest people who gave you the assurances that sufficient personnel would be available?

A That's correct.

Q You testified at the very start of your testimony yesterday that a Mr. Scorese was appointed liquidator of Blair & Co. by the Stock Exchange. Do you recall that?

A Yes.

Q Do you recall signing any agreement with the Stock Exchange which authorized them to appoint a liquidator?

A Yes.

Q Do you recall who signed that agreement?

A I believe that I did.

Q Anybody else?

A Mr. Arning of the Exchange.

Q So that it was pursuant to agreement that the Stock Exchange had that right to appoint a liquidator; is that right?

A Yes.

Q You testified that at the time of the Schwabacher acquisition there were Stock Exchange restrictions on Schwabacher, which you hoped would be lifted -- and I believe you said some of them were lifted but not all were lifted?

A Yes.

Q Do you recall that?

A Yes.

Q Were there also SEC restrictions on Schwabacher at the time of the acquisition?

A Yes.

Q Were some of those SEC restrictions lifted?

A Yes.

Q Yesterday Mr. Fried discussed with you an alleged capital violation of the Stock Exchange's capital rule by Blair as of May 31, 1968, which you denied was a violation at all, and he then asked you whether this was a problem up through the spring of 1969.

Do you recall that question?

A Yes.

Q And you answered, yes, it was a problem.

Did you mean to say that there was any problem --

MR. FRIED: I object.

THE COURT: Rephrase the question, Mr. Brooks.

Q Was there any problem with the capital ratio of Blair in 1969?

A No.

Q Was the only problem whether or not there had been a violation back in May of '68?

A Yes.

MR. FRIED: I object to that, your Honor.

THE COURT: I think he has a right to ask the witness what he meant.

MR. FRIED: He is testifying. He is not asking

the witness questions.

MR. BROOKS: It is cross-examination.

THE COURT: It is cross-examining, and he is saving time by this --

MR. FRIED: This is not normal cross-examination.

THE COURT: Well, that does not mean that on cross-examination counsel is not entitled to bring out something you didn't bring out.

Mr. Ramsey when you said yesterday there was a problem, what was the problem you were referring to?

THE WITNESS: Trying to convince the Exchange there was not a violation.

THE COURT: As of when?

THE WITNESS: As of May 3, 1968.

THE COURT: That was the problem you were talking about?

THE WITNESS: Yes.

Q Had the Stock Exchange accused you of being in violation at any time in 1969?

A No.

Q Had they accused you of being in violation at any time after May 31, 1968?

A No.

Q Do you recall the nub of the dispute between the Exchange and Blair concerning whether or not Blair was or wasn't in capital violation as of Mah 31, 1968?

A Yes.

Q What was that, sir?

A It was a question of the application of dividends. We felt it should be applied to us to that it wouldn't have appeared to be in violation as of May 31, 1968.

THE COURT: Would you explain that to us?

THE WITNESS: Yes, certain funds had hit the books and in our opinion should have been made good capital and they had not been made.

THE COURT: On securities owned by the company?

THE WITNESS: Yes.

Q Would a term used to refer to the problem be "aged dividends"?

A Yes.

Q Did the Stock Exchange argue that dividends which you had received were too old at the date of your questionnaire to be counted as good capital?

A That's correct.

Q What did Blair argue in return?

A That we felt the dividends should be applied and that they would come in, that it was good capital.

MR. BROOKS: Your Honor, at this time I would like to read from Exhibit 26 in evidence, which was, as you will recall, Mr. Hepburn's letter to Mr. Newman of March 19, 1969, giving Blair's argument on the question of whether there was a violation as of May 31, 1968.

THE COURT: I am sufficiently candid to admit that I did not remember that, but you are free to read it anyway.

Hepburn to whom?

MR. BROOKS: To Mr. Newman. Mr. Newman was identified by Mr. Ramsey as an employee of the New York Stock Exchange.

THE COURT: Right.

MR. BROOKS: "Dear Mr. Newman: This letter is in response to yours of February 24th addressed to Mr. James B. Ramsey" -- the February 24th letter is in evidence and is Exhibit 25 -- "relating to our answers to

the regular financial questionnaire as of May 31, 1968. This response has been delayed because by this point it is imperative that we review all the data relative to this very serious problem. Before going further we wish to assure you that Blair & Co., Inc. has a capital ratio of approximately 750 percent and a combined ratio of 1,216 percent, including the Schwabacher Division. We fully intend and have the mechanics to maintain a ratio less than 1500 percent, as you requested.

"With respect to the Rule 325 problem, the difficulty in this area relates primarily to the distinction of the corporate status of dividends receivable and short positions in dividend account. Our accounting and reporting has been guided in the past by Section 2315.15, Sub-paragraph 8 of the Rule 325, which emphasizes the collectability of dividends in determining current status.

"We and our auditors have assumed that subsequent collection and/or receipt of a stock in the ordinary course of business was sufficient evidence to classify a dividend short or receivable as current. The answers as filed indicate dividend debits of $256,470 and valuation of dividend shorts of $1,613,275.

"This is an area of principal concern in

evaluating our position with respect to Rule 325. Subsequent to filing the answers, we supplied you with dividend data indicating subsequent collection, receipt of stock, due bills et cetera, all reviewed by our auditors, which more than offset the $829,352 indicated by you.

"At this point we were informed that this information wasn't acceptable and that in view of New York Stock Exchange examiners dividend shorts and debits originating more than thirty days prior to the questionnaire date were to be classified as non-current. We have adjusted our recordkeeping and internal procedures to report and control dividend debits and shorts on this basis and treat over thirty-day items as non-current.

"Subsequently, as you are aware, we furnished the Exchange with data geared to the thirty-day concept which is acceptable and substantially reduced our computation from $822,352 to $183,943. We could probably do more in this area, but with the passage of time the task becomes practical.

"In the flow of correspondence between us we ask your consideration of the following items in any determination by you.

"1. On May 10th we requested an approval of the Exchange for additional subordinated cash in the amount of

$1 million from a non-voting stockholder. This capital was readily available prior to May 31st but approval wasn't obtained until July 19th. At the 31st the firm held approximately $1 million.

"2. At May 31st the firm held approximately $1 million of securities subject to investment letter. These securities were not reported in the answers to the questionnaire. I believe under certain circumstances the Exchange has allowed partial capital credit for such items.

"3. At and prior to May 31, 1968, stockholders were permitted to apply a portion of the proceeds of a $2,100,000 guaranteed note to firm capital. On July 31, 1968, $962,000 was added to capital from this source.

"I know the above is a repetition of much that has been said and written previously. However, any determination relating to Rule 325 is a very serious matter to us, and at this time, with the acquisition of Schwabacher successfully consummated, the results would be completely detrimental.

"In our final decision relating to the disposition of this matter we respectfully request your consideration of the following.

"1. The substantial amount of funds operating

prior but added to firm capital shortly after May 31, 1968.

"2. The confusion with the distinction of a current dividend item or the so-called thirty-day rule, which is not a published interpretation, to our knowledge.

"3. The absence of any credit for investment letter securities held by the firm.

"Very truly yours, B.H. Hepburn, Assistant to the Office of the President."

Q The president was you, was it not?

A Yes.

Q Mr. Ramsey, when the consideration was being given to conversion to the Midwest Stock Exchange System at Blair, had there been any consideration to the converting on an office-by-office basis rather than all at once?

A Yes.

Q Do you recall what the Stock Exchange's recommendation, if any, was, in respect of converting on an office-by-office basis or all at once?

A I don't recall.

Q Do you recall advising the Stock Exchange that Blair would convert on an office-by-office basis?

A I believe I did make that statement to the Stock Exchange at one time.

Q Do you recall why Blair didn't convert on an office-by-office basis?

A Not specifically. I can't remember all of it. There were many technical things involved. Also financial considerations made, but as to the final disposition to go all the way, I don't remember who -- I just remember it was a generally arrived at definition of what to do.

Q Do you recall Mr. Fried's questions about one clearing number or two clearing numbers after the Schwabacher merger?

A Yes.

Q Can you tell the jury what is meant by a clearing number?

A At the New York Clearing House each firm is normally given one clearing house number which obviously any deviation of that can be confusing, so that anything going down will go down by number as to that Stock Exchange Member Firm.

THE COURT: That is for use in paperwork?

THE WITNESS: Yes, sir.

Q What happens at the New York Clearing House? What function does that serve in the securities business?

A I don't know what all the technology involved in it would be at this point. I don't recall.

THE COURT: What is the general function of the New York Clearing House in regard to securities?

THE WITNESS: Simply as the name implies. It is difficult to give a --

Q Well, let me try to help you.

If Blair were to buy 100 shares of AT&T from me from another brokerage such as Merrill, Lynch, where would that transaction be consummated?

A At the Clearing House, is correct.

Q And how would Blair be referred to at the Clearing House?

A By number.

Q And how would Merrill, Lynch be referred to at the Clearing House?

A By number.

Q And do I understand correctly that after the Schwabacher acquisition by Blair there were two numbers at the Clearing House for Blair & Co., Inc.?

A Yes.

Q Did this generate any confusion?

A Yes, it would, normally.

Q Mr. Fried asked you whether the Stock Exchange had sanction Blair at all during 1970. Do you recall that?

A Yes.

Q Disciplined them in any way. I believe your answer was no, except the fact that Blair went out of business in the middle of 1970 or late 1970. I assume that you would have preferred to have stayed in business?

A Yes.

Q Perhaps that's a sanction or a discipline in some way?

MR. FRIED: I object to this.

THE COURT: Sustained.

Q Did you consider that a discipline or a sanction?

A Yes.

THE COURT: Mr. Brooks, for a special reason we are going to have to adjourn early today for lunch. We will adjourn at this time. We will return at 2:00 o'clock, ladies and gentlemen.

(Luncheon recess)

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AFTERNOON SESSION

2:00 P.M.

JAMES B. RAMSEY, resumed.

THE COURT: Mr. Brooks.

CROSS EXAMINATION CONTINUED

BY MR. BROOKS:

Q Mr. Ramsey, before lunch we were speaking of Stock Exchange disciplinary action with respect of Blair in 1970.

Do you recall whether the Stock Exchange restricted the business of Blair in 1970?

A Yes.

Q You do recall. And did they restrict the business?

A I think yes, underwritings and that type of thing.

Q Let me show you a letter that is dated March 10, 1970 addressed to yourself, signed by Mr. Bishop, which has been admitted into evidence as Plaintiffs' Exhibit 15, and ask you if you recall receiving that letter.

A Yes.

Q Does that letter impose the restrictions which

you responded ot my question about?

MR. FRIED: I object to that, your Honor. The letter speaks for itself.

THE COURT: Are those restrictions mentioned in the letter the ones that you were referring to? You can ask that.

THE WITNESS: Yes, I would remember these. Whether there were additions or not I'm not sure. But I do remember these.

Q May I retrieve the letter from you, sir?

A Yes.

(Handing)

MR. BROOKS: Your Honor, this letter has been read at least once before, perhaps twice. I won't burden the jury by reading it again. I would like to read the paragraph that refers to the restrictions.

THE COURT: All right.

MR. BROOKS: And that is the last paragraph. This is a letter from Mr. Bishop to Mr. Ramsey --

THE COURT: Is this the March 10th letter?

MR. BROOKS: Yes, dated March 10, 1970.

"We are fearful that the records of Blair & Co., Inc. are in such condition that you are in danger of

losing control of customer's accounts and the ability to properly supervise the registered representatives.

"Accordingly, we feel that steps must be taken promptly to contain the volume of your firm's business until such time as the condition of the books and records is significantly improved.

"To this end, the Exchange will not consider the approval of any new registered representatives or additional branch offices except in those instances where your firm is already committed.

"In this connection, please submit to us a list of all proposed registered representatives to whom you have made employment commitments. Additionally, you are directed to refrain from any further advertising or promotional activities which might tend to increase your volume of business.

"Sincerely, Robert M. Bishop."

Q Mr. Ramsey, did you consider those restrictions serious restrictions?

A Yes.

Q Could Blair grow if it could not hire new registered representatives or open new branch offices?

MR. FRIED: I object to that, your Honor. It is highly speculative.

THE COURT: I do not know how you can speculate it is. But it seems to me you are perfectly free to argue it. Even the layman can understand that proposition.

MR. BROOKS: I will withdraw the question, your Honor.

Q Mr. Ramsey, yesterday Mr. Fried showed you Exhibit 19-G in evidence, which is a letter dated February 26, 1970 by yourself to Mr. Fred Stock of the Stock Exchange.

I call your attention to Paragraph 1 of that letter, which tells Mr. Stock that Mr. Ireland is going to make a subordinated investment in Blair to bolster its capital position. The amount is $1,400,000 of net capital value that Mr. Ireland was going to contribute.

Would the market value of the securities be higher or lower than the net capital value of $1,400,000?

A The market value of the securities?

Q Yes, that he would contribute.

A It could have been lower.

Q Are you familiar with the term "haircut"?

A Yes.

Q What is the haircut?

A That was an arbitrary amount of monies taken

away by the New York Stock Exchange.

Q Taken away from what?

A From the whole.

Q The market value?

A The market value.

Q When you took away the haircut, didn't you end up with the net capital value?

A Yes.

Q So that the market value would be higher?

A Yes. I thought you asked me another question. I'm sorry.

Q Mr. Ireland did make that contribution, did he not?

A Yes.

Q Mr. Fried asked you whether or not the contribution was temporary. I believe you testified you did not recall. Let me ask you this, sir:

Temporary or not, did that Ireland contribution remain in Blair until Blair was liquidated?

A To my knowledge.

MR. FRIED: I object to this as argumentative.

THE COURT: Overruled.

Did you answer it?

MR. BROOKS: He did, your Honor.

THE COURT: What is the answer?

THE WITNESS: Yes, it remained in.

Q There was a good deal of testimony both today and yesterday about withdrawals, to use Mr. Fried's term, by Mr. Vanderbilt of capital that he had contributed to Blair.

Do you recall the questions and your answers?

A Yes.

Q Did Mr. Vanderbilt contribute capital at or about the time of the Schwabacher merger?

A Yes.

Q For what purpose did he contribute capital then?

A In order to make the merger with Schwabacher, we had to find an additional amount of money. Offers had come forward for this money, but they were considered such that we could not use that, the interest rate or whatever being too high, and other things that were needed in order to make this money available.

So Mr. Vanderbilt offered to put up an amount of money to make the merger, bridge financing, while we were doing the deal.

Q You used the term "bridge financing." What do you mean by "bridge financing"?

A Well, the Schwabacher partners had some of their money encumbered and it was expected that within a short period of time this money would be freed up, by which time they could take up their normal -- their amounts of stock due.

And so, in order to bridge that period of time when their money became due, Mr. Vanderbilt put up his money and loaned us the money for a period of time.

Q At the end of that time, was that money returned to Mr. Vanderbilt?

A No. It was turned over over a period of time.

Q Over a period of time?

A Yes.

Q He got back the bridge financing.

A Yes.

Q When he had recovered it, or had been paid back the bridge financing, did he have a remaining capital investment in Blair & Company?

A Oh, yes.

Q Do you recall how much?

A I would say a couple or three million. I'm not sure.

Q A couple of three million?

A That is my impression.

Q Mr. Ramsey, I would like to read to you from the first paragraph of Note 3 in the Blair & Co., Inc. financial statement, or statement of financial condition, with the report of Arthur Young & Company attached that plaintiffs have had admitted as Exhibit 2 in evidence.

Are you familiar with that statement?

(Handing)

I give it to you to review. Here is the original.

A Yes, I've seen this.

Q Perhaps that is more recognizable. You can keep that copy, if you wish.

I am going to read to you from the first paragraph of Note 3 on the page of the statement on which the balance sheet appears:

"Subordinated borrowings ($22,517,767 in the accompanying statement) of which $20,810,000 has been borrowed from stockholders, includes $1,400,000 cash which was repaid in November 1969 and $250,000 cash and securities with an approximate market value at September 1969 of $1,700,000 which are scheduled to be repaid or returned at various dates through April 1970."

Mr. Ramsey, my question is, is that footnote, including within it the amounts to be returned, Mr.

Vanderbilt's bridge financing which Mr. Fried was discussing with you this morning?

A Yes.

THE COURT: Can youtell me what the date of that statement is, Mr. Brooks?

MR. BROOKS: It is as of September 26, 1969, with the report of Arthur Young attached dated December 5, 1969.

THE COURT: Thank you.

Q When you and Mr. Fried were discussing monies going back from Blair to a capital contributor, the term "withdrawal" was used by both of you.

Can you tell me what you mean when you used the term "withdrawal" in that context?

A A subordinated lender to the firm would make out a statement requesting that his capital be returned to him, to be withdrawn. And there were rules and regulations by us, our own regulations, as to what amount of time would have to go by before that money could be withdrawn.

Q Well, were those provisions about withdrawal and the amount of time that had to go by contained in the agreement that the lender would sign with Blair?

A Yes.

Q And that for a withdrawal to occur the lender would have to exercise his right to give notice that he wanted his money back under his agreement, is that correct?

A Yes, that's correct.

Q Had you consulted with your counsel as to whether you could prevent a lender giving the proper notice to reclaim his money from taking his money back?

A Yes.

Q What was counsel's advice to you?

A That I could not legally prohibit them from the return of their capital after the prescribed period of time.

THE COURT: You can't hear the witness?

All right. Speak louder.

Did you hear the question that Mr. Brooks put? All right. Let the reporter read back the answer.

(Record read)

THE COURT: Could you keep your voice up, please.

THE WITNESS: Yes.

Q Was the Stock Exchange's advice to you the same?

A Yes.

Q Mr. Ramsey, in that same respect I show you what was marked this morning as Plaintiffs' Exhibit 51-A in evidence. This is a letter to you from Mr. Bishop which essentially tells you that the Stock Exchange would have to approve any additional withdrawals or repayments of capital from Blair.

Would you take a look at that, please.

(Pause)

A Yes.

Q You testified this morning that you had requested a stronger letter from the Stock Exchange, is that correct?

A Yes.

Q In other words, one which would tell you that you couldn't permit any repayments to be made pursuant to the agreements.

A Yes.

Q Did the Stock Exchange or anyone at the Stock Exchange tell you that this was the strongest they could put it, within the law?

A Yes.

Q Mr. Ramsey, yesterday you testified about your telephone call with Mr. Arning right after the meeting at the Bankers Club on January 15th, and this morning you

testified about a meeting that occurred shortly thereafter.

Yesterday, at pages 825 and 831 of the trial transcript, you testified that after the meeting with Mr. Arning you went to the SEC to tell them essentially the same story that you told Mr. Arning and you told the people at the Bankers Club meeting.

Is that a correct summary of your statement?

A Correct.

Q Now, this morning I believe you testified that you couldn't recall the date of that meeting with the SEC, is that correct?

A That's correct.

Q What I would like to do is to try to refresh your recollection by reading from the trial transcript at the point at which Mr. Vanderbilt's testimony about that meeting was read into the record and ask you if it refreshes your recollection on the date of the meeting.

MR. FRIED: The witness ought to be shown that instead of rereading it.

MR. BROOKS: It is in evidence, your Honor.

THE COURT: Whether it is in evidence I do not know. But it seems to me that you, Mr. Fried, used that method yourself on a number of occasions.

MR. FRIED: He is trying to refresh his

recollection, and for that purpose all he has to do is to show him the testimony.

THE COURT: I will allow it to be read, since it is in evidence, particularly.

MR. BROOKS: Reading from page 616, beginning at line 14.

THE COURT: Of what document now? What deposition?

MR. BROOKS: This is the trial transcript, which includes Mr. Vanderbilt's deposition testimony --

THE COURT: You are talking about the trial transcript of this case?

MR. BROOKS: Yes.

THE COURT: Oh, certainly you can read it.

MR. BROOKS: At 616, beginning at line 14. I was the reader at that point. "And at line 24 on page 181 there is more testimony about the meeting with the SEC in January beginning with the following:

"Mr. Vanderbilt, you testified about a meeting with the SEC in January at which Mr. Stock, I believe you said, was present, representing the New York Stock Exchange.

"A Correct.

Q The pages that have been put into this transcript from the Arneil transcript, which you will recall Mr.

Fried read, indicate that Mr. Stock didn't say anything at that meeting.

Will you tell me who was at that meeting on behalf of the SEC?

A The fellow who was in charge, the head of the district, the head of the SEC New York District."

Mr. Fried interjected to ask what page. He was told.

Continuing on:

"Q Kevin Thomas Duffy?

"A That's the fellow, Kevin Duffy.

"Q Was he there or was he chairman of the meeting?

"A He was the chairman.

"Q Were there any other personnel from the SEC at the meeting?

"A Oh, I think, as I recollect, there must have been at least two more, maybe three or four of them.

"Q Do you recall any of their names?

"A No.

"Q Would you recall them if I suggested some names to you?

"A Well, suggest.

"Q Bill Morgan?

"A Yes. I think he was there."

Now let me read one more passage to you, beginning at 618, line 20 of the trial transcript. Let's begin at 618, line 13:

"Q Okay. Do you recall who called the meeting?

"A I guess Kevin Duffy did, or I don't know how the meeting was set up or by whom.

"Q Do you recall where it was held?

"A It was in Duffy's office.

"Q Where was that?

"A In the Federal Building somewhere.

"Q In New York City?

"A Right.

"Q Can you tell who said what to whom at the meeting?

"A Well, the gist of the meeting was for Jim Ramsey to lay before the SEC and, through Stock, the Stock Exchange that certain serious problems had surfaced as far as Blair was concerned, and he wanted to go through the record that no information was being withheld. It was all being laid on the table and that he sought direction from the SEC and from the Stock Exchange."

Did those passages from Mr. Vanderbilt's testimony refresh your recollection that that meeting with the SEC was in January?

A Yes. In January, yes.

Q Can you place it any more particularly in January?

A No, sir. But may I elaborate on something?

Q Sure.

A At the Bankers Club meeting in January, on January 15th, I made the statement that I would go to all the necessary places to lay the case of Blair before them, the Stock Exchange and the SEC. And I asked for a date to be set up with those bodies, with the various people there.

I asked for dates to be made immediately and that I would attend them as soon as possible. But in the meantime I was going to report durectly to Mr. Arning, which I did.

I don't know exactly what date the meeting was set up with the SEC. I know it was set up as quickly as it could be set up. And it therefore was in January. It was almost immediately after the Stock Exchange meeting. But as to when, I don't know. As to what date, I don't know.

Q Mr. Ramsey, did you have subsequent meetings with the SEC?

A Yes.

Q I am going to show you a letter which I have pre-marked as Defendants' Exhibit X for identification, which appears to be addressed to Kevin T. Duffy and William D. Moran of the SEC. It appears to bear your signature and is dated April 21, 1970.

I ask you if that is your signature at the end of that letter?

A Yes.

Q Did you send this letter to Messrs. Duffy and Moran on or about April 21, 1970?

A Yes.

MR. BROOKS: I offer the letter in evidence, your Honor.

THE COURT: Does Mr. Fried have a copy of it?

MR. BROOKS: Yes, he does. I just gave him one.

MR. FRIED: No objection, your Honor.

THE COURT: Thank you. Received.

(Defendants' Exhibit X for identification was received in evidence)

Q Mr. Ramsey, would you read the first paragraph of that letter to yourself.

(Pause)

A Yes, sir.

Q Does that paragraph recite SEC contact between Blair and the SEC that had been held in the month of April?

A Yes.

MR. BROOKS: May I read that paragraph?

THE COURT: Certainly.

(Mr. Brooks read to the jury from Defendants' Exhibit X in evidence)

There follows a list of eleven steps which Blair proposed to take voluntarily. At this time I will not read that lengthy list.

Mr. Reilly rightfully corrects me. The introductory paragraph to that list says that beginning in the latter part of 1969 Blair, recognizing the existence of problems relating to recordkeeping within the firm, took the following steps.

So that the eleven steps of self-improvement are steps that had been begun in 1969. I apologize for misreading. I hope I did not mislead anyone.

On page 4 there appears another list of ten steps which Blair, "As a result of our conferences during April 1970, proposes to take" as additional steps to improve their condition.

And there follows another list of three items which Blair has taken "to assure adequate reporting to the staff of the Securities and Exchange Commission and the New York Stock Exchange."

Q Mr. Ramsey, do you see the list of three items which Blair is going to take to ensure adequate reporting to the staff of the Securities and Exchange Commission and the New York Stock Exchange?

A Yes.

Q On page 5?

A Yes.

Q Were those steps followed to assure adequate reporting?

A Yes.

Q Do you see the immediately following paragraph on page 6 which begins with the sentence --

THE COURT: Page 6 or page 5?

MR. BROOKS: 6, your Honor.

THE COURT: Right.

Q (Continuing) -- which begins with the sentence, "Blair has already indicated to you that since April 1, 1970 it obtained additional secured demand note capital in the amount of $2 million and that the liquidated security positions supporting other secured demand notes

in the amount of approximately $13 million."

My question to you, Mr. Ramsey, is, is the first clause in that sentence, referring to additional secured demand note net capital in the amount of $2 million that had been acquired subsequent to April 1st, referring to Mr. Foley's contribution to Blair.

A I don't think so. I'm not sure. I don't think it came in until after this.

Q After what?

A After this date.

Q After this letter?

A Yes. I beg your pardon. After April 1st.

Q Well --

THE COURT: The letter says "Since April 1st."

THE WITNESS: Since April 1st. Yes, I think it would, then,on that basis.

Q Do you know of any other capital contribution in the sum of approximately $2 million that came in between April 1 and April 21, 1970?

A No.

Q The second clause in that sentence refers to a liquidation of approximately $13 million of security positions supporting other secured demand notes.

Is that a reference to the liquidation of the

collateral for the members and alleged members which this morning we agreed took place sometime in or after the week of April 6th, 7th, 8th and 9th?

A Yes.

Q I note that copies of this letter are indicated as having been sent to Mr. Bishop and Mr. Deignan of the Stock Exchange and Mr. Daley, who was your attorney, is that correct, Blair's attorney?

A That's correct.

Q Mr. Ramsey, would you go back to page 1 of Exhibit X. That is the letter we have been discussing.

Do you see there the reference to a meeting in the first paragraph, on Wednesday, April 15, 1970, where Mr. Ramsey and Mr. Vanderbilt, Mr. Daley and Mr. Segal met with members of the staff of the SEC?

A Yes.

Q I am going to show you a memorandum which I believe -- I am going to show you a memorandum dated April 15, 1970, and ask you if that memorandum reflects the proceedings at the meeting of April 15, 1970.

THE COURT: Will you specify the exhibit number.

MR. BROOKS: Exhibit W for identification.

THE COURT: The question is --

MR. BROOKS: Is that a memorandum of the proceedings of that meeting of April 15, 1970, which was described in the prior exhibit?

MR. FRIED: I object to that, your Honor, as a totally wrong description.

This is a memorandum made by someone after that meeting.

THE COURT: Yes, I understand.

MR. FRIED: It is not a memorandum of the proceeding --

THE COURT: Does the memorandum accurately describe the proceedings?

MR. BROOKS: That is what I meant to say, your Honor. Thank you.

MR. FRIED: May I ask a question on the voir dire concerning this document?

THE COURT: Yes.

VOIR DIRE EXAMINATION

XX BY MR. FRIED:

Q Mr. Ramsey, do you know when this document was prepared?

A No.

Q Did you ever read that document before today?

A No.

Q Did you ever read it --

THE COURT: Excuse me, Mr. Fried. I do not mean to be discourteous, but since Mr. Brooks has adopted my suggestion of asking if the memorandum accurately reflects the proceedings of the memorandum, it does not make any difference whether --

MR. FRIED: Your Honor, I don't think it is appropriate to ask him if he --

THE COURT: I am sorry. I agree with you.

Did you write this memorandum, Mr. Ramsey?

THE WITNESS: No.

THE COURT: Did you ever read it?

THE WITNESS: Not to my knowledge.

THE COURT: What is it you are trying to bring out?

MR. BROOKS: Whether that memorandum accurately sets forth the proceedings of the meeting at which Mr. Ramsey attended.

THE COURT: I do not think that is the way to approach it. First find out what happened at the meeting and then ask the question.

Will you put that aside for the moment.

BY MR. BROOKS:

Q Mr. Ramsey, will you tell me what happened at the meeting on April 15th, at the SEC?

A It's very difficult to distinguish one meeting vis-a-vis the next meeting and what happened to any one of them. I know what happened but I'm not sure at which meeting.

Q Would you read the exhibit and tell me whether it refreshes your recollection as to what happened at that meeting, on April 15th?

(Pause)

A Yes. I remember this meeting.

THE COURT: After looking at the memorandum, can you tell us what happened at the meeting?

THE WITNESS: Well, it was quite lengthy, but at the end, the SEC, after hearing our tale of woe, were expressing their concerns as to our continuance.

They were primarily concerned at some of the complaints that had been issued to the SEC by various stockholders and others that lost securities, the amount of money and the amount of losses the firm had taken.

They expressed it as their wish that we could clean up our own porch and remain in business. They didn't look to see these firms going out, particularly firms that had a very long and honorable history. They would like to do anything they could. They felt that our net capital position was in danger.

There was an excess of only about a million and a half at that time, from their view, and they were anxious that we take steps so that we didn't show further decreases.

MR. BROOKS: Your Honor, I offer the exhibit in evidence at this time.

MR. FRIED: I am not going to object to it, your Honor.

THE COURT: I was going to rule.

MR. FRIED: The more I look at it, the more I see that I am not going to object.

THE COURT: All right. Received.

(Defendants' Exhibit W for identification was received in evidence)

MR. BROOKS: I would like to read just one sentence to the jury from the letter at this time, your Honor.

THE COURT: All right.

(Mr. Brooks read to the jury from Defendants' Exhibit W in evidence)

THE COURT: May I ask if it is agreed as to who wrote this memorandum?

MR. FRIED: Yes. Mr. Deignan. Mr. Deignan's initials appear.

MR. BROOKS: I agree that Mr. Deignan wrote the memorandum.

Q Mr. Ramsey, do you know who Mr. Moran was in April of 1970?

A Yes.

Q Who was he?

A I believe he was district director of the SEC. I say that -- he might have been deputy. And Mr. Duffy was regional director.

THE COURT: I think Mr. Moran was second in command to Mr. Duffy.

THE WITNESS: That's right.

Q I show you another letter to Messrs. Duffy and Moran dated April 22, 1970, and apparently signed

by you, which I have pre-marked as Defendants' Exhibit Y for identification --

MR. BROOKS: I have a copy for the bench, if your Honor wishes.

Q (Continuing) I ask you if that letter bears your signature?

A Yes.

Q Was it sent on or about April 22nd to Mr. Duffy and Mr. Moran?

A Yes.

MR. BROOKS: I offer the exhibit in evidence.

MR. FRIED: Your Honor, I have no objection, but we are only cluttering up the record, because this is after the closing of the Foley loan.

THE COURT: I think the jury is aware that the closing was April 6th --

MR. FRIED: April 3rd. The liquidation was April 6th.

THE COURT: It does not mean that facts coming in after April 3, 1970 may not have some relevance.

Received in evidence.

(Defendants' Exhibit Y for identification was received in evidence)

Q Mr. Ramsey, this letter tells the SEC that

Blair is --

MR. FRIED: The letter speaks for itself. I object.

MR. BROOKS: The alternative is to read the letter, your Honor. I was trying to shortcut it. I would be pleased to read it. It is not that long.

THE COURT: In view of Mr. Fried's objection, why don't you read it, since it is not that long.

(Mr. Brooks read to the jury from Defendants' Exhibit Y in evidence)

Q Mr. Ramsey, were you successful in concluding the negotiations with the corporate lender for $10 million?

A No.

Q After April 22, 1970, were you successful in raising any other capital for Blair & Co?

A No.

Q Do you recall an investorin Blair named Wygod?

A Yes.

Q Who is Mr. Wygod?

A Mr. Wygod is president of an investment corporation. He's also done various venture capital deals.

Q Did he make a capital contribution or capital investment in Blair & Company?

A I can't recall whether he was an investor in Blair or not, because I'm confusing it with another investment later. I can't recall whether he was an investor in Blair & Company or not, honestly.

Q If he was, did he make the investment --

MR. FRIED: Your Honor, this is immaterial. It is after the fact.

THE COURT: I cannot tell whether it is material or not. Let me hear the question?

Q Did he make the investment which you have in mind after April 22, 1970?

THE COURT: Well, put it a different way.

Q Was he referring to an investment after April 22, 1970?

A Into Blair?

Q Mr. Wygod's investment.

A In Blair?

Q The one you have in mind. You aren't sure whether it was in Blair or not.

A I don't recall that it was an investment in Blair.

Q What do you recall his making an investment in?

A Thomson-McKinnon.

Q Was that an investment in the company of Thomson-McKinnon?

A Yes.

Q Will you tell me how his investment fitted into the company --

MR. FRIED: I object to that. This is something that has to do with Thomson & McKinnon. It is not an investment in Blair. That's the basis of my objection.

THE COURT: Well, I do not think that puts it out of the range. I understand the jury has the right to infer that efforts were made in the direction of Thomson-McKinnon and they will have to determine what the reasons for the non-consummation of that proposal were.

I will allow the question.

Q Go ahead.

A I had asked Mr. Wygod and his associate to make an investment in Blair which they agreed to do under certain circumstances.

However, I don't feel that that was actually ever consummated between ourselves and Martin Wygod because of certain things that came up, that we could not quite consummate the deal, and I asked him if he would

try to make the same investment in Blair's assets if Blair moved to another organization, would he thereby make the investment in order to save some part of Blair's asset.

Q Did Mr. Wygod make the same investment in Thomson-McKinnon that he had discussed with you making in Blair?

A Yes.

Q How much did he invest?

A A million.

Q Why was it advantageous to Blair to have Mr. Wygod invest in Thomson & McKinnon?

A I was able to move out thousands of customers accounts that might otherwise have been lost.

Q Why was an investment by Mr. Wygod necessary for you to move out customer accounts from Thomson & McKinnon?

MR. FRIED: I object, your Honor. It is wholly immaterial to this case.

THE COURT: Overruled.

A So that Thomson-McKinnon would have the necessary capital to sustain those accounts being moved over. In other words, we didn't want to put a strain on Thomson-McKinnon's capital also, so he was finding

additional outside capital for Thomson-McKinnon, so I was trying to find funds to enable us to move as many accounts over as possible.

Q Did the acceptance of customer's accounts by Thomson-McKinnon require additional capital in order to support those accounts?

A Yes.

Q You testified this morning that you had reached an agreement in principle with Thomson-McKinnon on a merger or acquisition transaction, is that correct?

A Correct.

Q Did that agreement in principle require a capital infusion to Thomson-McKinnon to support these customer accounts that Thomson-McKinnon would be taking on?

A Yes.

Q And was the reason for the failure of that agreement in principle to become effectuated that the necessary capital couldn't be found to infuse into Thomson-McKinnon?

MR. FRIED: I object to counsel testifying in this case.

THE COURT: I would prefer you ask him what the reasons were for the failure of the merger to go

through.

Q What was the reason why the agreement which you reached in principle did not materialize into a material deal?

THE COURT: Reason or reasons, if there was more than one.

A I wanted to take capital out of Blair and move it into Thomson-McKinnon, and the Stock Exchange felt that that would impair possible the trust fund and that it couldn't, that the danger would lie in having to recall that, and the legalities of being able to recall that capital once it was moved over.

So it was determined that they could not allow the capital to come in.

Q Was that capital required under the agreement in principle to be put into Thomson-McKinnon?

A Yes.

Q Was it also required at Blair under Stock Exchange rules to support Blair's aggregate indebtedness?

A Yes.

Q When you said that if the capital had been infused into Thomson-McKinnon, it might not be able to come back, if needed, I think you said.

Am I paraphrasing your testimony correctly?

A Correct.

Q What do you mean by that?

A We felt in our figures that had it gone through, enough capital would have remained in order to allow the merger to take place.

In other words, enough capital would have remained with Blair that would have allowed it, and we felt that the differences wouldn't be more than there was sufficient capital to handle.

However, the STock Exchange had made a similar check and they felt that enough money wouldn't be left in Blair if we took out a certain portion of it and they felt there would be a difference of some three-quarters of a million dollars, or at least that, and they felt that would impair the capital to that extent, therefore -- what I said then was the possibility of taking the money out of Blair and putting it into Thomson-McKinnon and then if we did need it -- may I move it back in some way to Blair or at least have the opportunity to get additional capital to move back.

Q And what response did you suggestion receive?

A It wasn't favorably looked upon.

Q Why?

A They felt that it would be legally very

difficult to move the capital back and forth, and they also felt there was a question whether or not they would indeed be the amount or whether more would be needed.

Q If you moved the capital back from Thomson-McKinnon, wouldn't that have left Thomson-McKinnon in a deficiency position?

A Probably.

MR. FRIED: I object to this, your Honor.

THE COURT: Overruled.

Q You testified this morning that you had requested Mr. Arning to make a loan to Blair from the trust fund.

Do you recall that?

A Yes.

Q Will you tell us more of the circumstances about that proposal?

A I knew that a trust fund was in existence to help those firms that had been experiencing difficulties, or who were -- I guess I want to say who had gone out of business for one reason or another and it was to aid these firms.

I wondered about the possibility of making a loan from the Special Trust Fund to Blair & Company.

Q What did Mr. Arning say in response to your

proposal that that be done?

A That it couldnt be done. It wasn't a legal transaction, unless the firm were in liquidation, bankruptcy and what not, that there was no reason that the fund could make such a loan.

Q Did Thomson-McKinnon eventually take on branch offices of Blair & Company?

A Yes.

Q How many?

A I think it was 16. 15 or 16.

Q Did they take on those offices after the meeting that you described, where other member firms were asked to bid on Blair's branch offices?

A Yes.

Q Mr. Ramsey, Exhibit 52 in evidence is a letter from Mr. Arning to yourself, dated April 28, 1970, thanking you for coming by to discuss Blair's problems with Mr. Arning.

I show you that to refresh your recollection.

(Pause)

A Yes.

Q I now show you a two-page memorandum dated April 28, 1969, again signed with Mr. Deignan's initials, which I have pre-marked as Defendants' Exhibit Z for

identification, and ask you if this memorandum sets forth the discussions that were had at that meeting which Mr. Arning refers to in Exhibit 52.

MR. BROOKS: Your Honor, I have an additional copy of that document, if you wish to look at it.

THE COURT: Thank you.

A Yes. This outlines the meeting.

MR. BROOKS: I offer the exhibit in evidence.

MR. FRIED: No objection.

THE COURT: Received in evidence.

THE COURT: Are there two of them here or one?

(Defendants' Exhibit Z for identification was received in evidence)

Q Mr. Ramsey, this memorandum recites that along with you and Mr. Vanderbilt, Mr. Morpurgo attended the meeting. I believe Mr. Arning refers to him as "George".

A Yes.

Q What capacity did Mr. Morpurgo serve in at Blair & Company?

A Originally he was hired as a consultant to myself and to the board of directors.

Q A consultant as to what subject?

A The computer operations. Mr. Morpurgo formerly was a vice-president of the Midwest System as I recall it. He had left the Midwest System and had joined another firm on the West Coast.

Q Is that Intelicon, that was referred to in a prior memorandum?

A Yes. I had asked him to come in very early in the conversion, around the end of the year, when I had heard that the situation was getting pretty rough. I invited him to come in and make an inspection.

I then persuaded him to leave his firm and join us as an overseer, and latterly I relieved Mr. Holvenstat and asked Mr. Morpurgo to take it over completely.

Q Had Mr. Morpurgo taken over completely by April 28, 1970?

A I don't recall the dates as they meshed in there. I would certainly suppose that if he were with me and Mr. Vanderbilt at that meeting, he was certainly acting in that capacity. Whether or not any change-over had been made or not, I don't know.

Q Did you rely on Mr. Morpurgo as well as the other gentleman you named this afternoon to supply you with expertise in respect to the operations area at Blair?

A Once he was on the scene, I relied on him very heavily.

Q The memorandum says that you, Mr. Vanderbilt and Mr. Morpurgo met with Messrs. Cunningham, Arning and Deignan. We have identified Mr. Arning and Mr. Deignan.

Could you tell the jury who Mr. Cunningham is, or was in April 1970?

A If I am not mistaken he was second in command to the president of the Exchange. I may stand corrected on this. I thought he was executive vice-president.

Q Mr. Ramsey, do you recall another meeting with the staff of the Securities and Exchange Commission on January 4, 1970?

A Not specifically.

Q I would like to show you a memorandum which I have pre-marked as Defendants' Exhibit AA for identification and ask you if that refreshes your recollection.

MR. BROOKS: I have a copy for the Court and I have given one to Mr. Fried.

THE COURT: Thank you.

A Yes. I remember this meeting.

Q Does the memorandum accurately set forth what occurred at the meeting?

THE COURT: Is it agreed that this memorandum was prepared by the staff of the SEC?

MR. BROOKS: I believe so.

MR. FRIED: That's correct, your Honor.

A Yes. This seems to set forth what took place at the meeting.

MR. BROOKS: I offer Exhibit AA in evidence.

MR. FRIED: No objection, your Honor.

(Defendants' Exhibit AA for identification was received in evidence)

Q As you recall it, Mr. Ramsey, did you set before the SEC at this meeting the status of your negotiations with Thomson-McKinnon as they were as of June 4, 1970?

A Yes.

Q Did you keep the SEC advised after June 4th of the negotiations with Thomson-McKinnon?

A Yes.

Q Would you from time to time telephone representatives of the staff of the SEC and discuss the problems of Blair with the staff of the SEC on the telephone?

A Yes.

(Pause)

MR. BROOKS: Your Honor, I would like to read the second paragraph of Page 3 of the memorandum.

THE COURT: All right.

MR. BROOKS: That is the last one, AA. First I think we ought to describe it as a memorandum of an office conference. The memorandum is dated June 8, 1970. It refers to a conference convened on June 4, 1970 with various members of the SEC staff and various personnel in Blair, quoting Mr. Ramsey, and accompanied by the attorney for Blair, Mr. Joseph Daley.

The second paragraph on page 3 reads:

(Mr. Brooks read to the jury from page 3, paragraph 2 of Defendants' Exhibit AA in evidence)

Q Mr. Ramsey, I want to go back to the Bankers Club meeting on January 15th and ask you, at that time, did you discuss with the assembled people the --

MR. FRIED: I submit, your Honor, it is improper to suggest to the witness the subject matter until his recollection is exhausted.

THE COURT: I do not understand this to be completely unorthodox cross examination. It is cross examination. I do not see why, now that the material relating to that has been brought out on direct, leading

questions cannot be asked on cross examination.

MR. FRIED: I don't see why he can't ask him if anything else was said before he tries to suggest --

THE COURT: The question is whether he is required to, and I do not think he is required to.

MR. FRIED: I think it is improper to suggest the subject matter, your Honor.

THE COURT: I do not believe it is, on cross examination.

Q Mr. Ramsey, going back again to that January 15th meeting at the Bankers Club, did you discuss with the people who were assembled the generation of outside capital to infuse into Blair?

A Yes.

Q Did you discuss what should be told to a prospective outside capital contributor who might be interested in putting money into Blair?

A Yes.

Q What did you discuss should be told to a potential capital contributor?

A I said that because of the computer situation and because of our inability to know, that we would have to, and anybody who would put money into the firm would have to, be given more than the usual consideration

of information, that is, everything pertaining to the operation.

And I made this statement again and again at board of directors meetings and at that meeting, that anything pertinent to Blair & Company should be told to any prospective investor.

Q I believe you testified that you were away from the city at the time that the Foley transaction was closed, on or about April 3rd.

A Yes.

Q Do you recall that?

A Yes.

Q Did you ever meet Mr. Foley thereafter?

A Yes.

Q Had you met him before April 3rd?

A I don't think so.

Q Did you ever discuss with Mr. Foley what his reasons were for investing in Blair & Company?

A No.

Q Did he ever tell you why he put money in Blair?

A No.

Q While the Foley negotiations were going on prior to April 3rd, did you know that they were going on?

A Yes.

Q Did you know at the same time whether Mr. Foley was negotiating with any other firm, stock brokerage firm, to make a capital contribution to that firm?

A Yes.

Q What did you know about that?

A I had had a call from a chief executive officer of another brokerage firm saying that they had had discussions with Dr. Foley, Mr. Foley.

Q What other firm was that?

A Hayden, Stone.

Q Did you understand those discussions had terminated?

A I don't know at what point. No, not necessarily.

Q Did you understand the discussions with the other firm were continuing?

MR. FRIED: Your Honor, his understanding of what took place between Mr. Foley and somebody else is totally irrelevant.

THE COURT: I do not understand the relevance. Can youconnect it for me somehow?

MR. BROOKS: I think they show sophistication of the witness, if nothing else, of Mr. Foley, the plaintiff.

THE COURT: You are talking about the plaintiff now?

MR. BROOKS: Yes.

THE COURT: You said the witness.

Well, there has been no dispute about the fact that he negotiated with Hayden, Stone. But, again, it is not a question of Mr. Ramsey's understanding of the situation. The question is what actually occurred.

MR. BROOKS: The issue is whether he was negotiating with both at the same time.

THE COURT: Well, you can ask Mr. Ramsey if he knows something, but not what his understanding was. That is what Mr. Fried is objecting to.

Q Do you know whether Mr. Foley was negotiating with both Hayden, Stone and Blair at the same time, Mr. Ramsey?

THE COURT: At least you can ask were the reports that you got from Hayden, Stone at a time when Mr. Foley was also negotiating with Blair?

Q (Continuing) I adopt his Honor's question, Mr. Ramsey.

A I was told, yes. But that's the only way I can answer that.

THE COURT: You mean you were told by Hayden,

Stone?

THE WITNESS: Yes.

THE COURT: At a time that you knew that Mr. Foley was negotiating with Blair, is that right?

THE WITNESS: Yes.

Q Mr. Ramsey, yesterday Mr. Fried had admitted into evidence and discussed with you Exhibit 37 and 38, which as supplemented this morning are the Special Operations Questionnaire for Blair & Co., Inc. as of January 30, 1970 and as of February 27, 1970 respectively.

I show you those two. Mr. Fried pointed out to you that there was a blank in the spot left for the capital ratio to be inserted on the first page there.

Do you see that blank?

A Yes.

Q And he asked you, was it not a fact that the reason why that capital ratio was not inserted was because the books and records at Blair were in such a mess that nobody could figure it out?

Do you recall that?

A Yes.

Q I believe you answered yes.

MR. TURETSKY: What exhibits are they?

MR. BROOKS: 37 and 38.

Q Mr. Ramsey, isn't it a fact that the capital ratio is simply the aggregate indebtedness divided by the net capital?

A Yes.

Q In fact, in 1-H on this form it says "Ratio of aggregate indebtedness to net capital," does it not?

A Yes.

Q So that you and I, if we were each more skilled with numbers, could sit down and compute the capital ratio from the amount of net capital which appears in line G and the amount of the aggregate indebtedness which appears in line B; could we not?

A True.

Q So that the answer, then, could not be that the capital ratio does not appear on this form because the books and records of Blair are in such a mess, could it?

A On that logic, no.

THE COURT: I suppose this is a good time for us to take an afternoon recess.

(Recess)

Q Mr. Ramsey, yesterday Mr. Fried questioned you in respect to Exhibit 28 in evidence, as it was supplemented this morning. Specifically, he asked you in respect to Question 13, the last two lines: Security positions not in balance. Ownership not known of long $622,225." and "Short $705,449."

Do you see those entries there on Exhibit 8?

A Yes.

Q Do you recall the general series of questions Mr. Fried went through yesterday?

A Yes.

Q Do you recall Mr. Fried saying that if you had General Motors long and AT&T short, that wouldn't wash?

A Yes, and I remember not being quite sure at the time where we were going.

Q Looking at those two entries in Question 13, sir, can you tell me anything about what kind of stock those numbers are referring to, whether it is AT&T, General Motors or General Electric?

A No.

Q Can you tell anything about how long those securities which are unlocated, according to that answer, have been unlocated?

A No.

Q Can you tell how long those securities which are designated as "Ownership not known, long" have be so existant?

A No.

Q Can you tell me from those entries how much work has been done to research those items and clear them up?

A No, sir.

Q Can you tell anything about the detail beyind those two entries in Question 13 from that Questionnaire?

A No.

Q Mr. Ramsey, would you tell me your present recollection as to the cause of the failure of Blair & Co.?

A First, it would have to be the computer failure and the time of conversion. I would say that was far above anything else.

Number 2, the general demise of the markets that were underlying the firm and all other markets, meaning the various stocks that the firm rested its SDN accounts on, its subordinated capital. Those companies became much less in value, due to the complete deterioration of the overall market. Therefore, the underpinnings came down with the market. I would say those were the two most important things.

Q Let me make sure I am clear about the last point that you referred to, when you say that those companies that

were underpinning Blair's situation. Do you mean the companie in which Blair owned securities, such as General Motors and AT&T -- the value of those stocks went down?

A Well, if they were in the accounts of the subordinated lenders, in other words, were being put up at security collateral for the firm, subordinated capital for the firm, whether it be General Motors or Chrysler or any other stock, as it became less in value, then the account also became less the underpinnings of the firm.

Q And that is what you refer to when you say the value went down?

A Yes.

THE COURT: To put it shortly, you mean your capital shrank because it was largely in stocks that declined in value?

THE WITNESS: Yes, sir.

Q Do you recall whether there was a decline in trading volume at the same time?

A Yes.

Q Did the decline in trading volume have an adverse effect on the fortunes of Blair?

A That would be the third reason. There were three reasons.

THE COURT: How did that affect Blair?

THE WITNESS: If you have the machinery in place that would process X number of tickets, and you have salaries to pay of the people that are processing those tickets, and you haven't the tickets, if the total volume in the New York Stock Exchange community shrinks, you have expenses but no revenues to offset it --

THE COURT: And your revenues come substantially from commissions on sales or purchases?

THE WITNESS: Always.

THE COURT: And the fewer the sales and purchases, the less your commissions; is that true?

THE WITNESS: True.

MR. BROOKS: No further questions at this time, your Honor.

THE COURT: Mr. Loflin?

BY MR. LOFLIN:

Q Mr. Ramsey, I represent the American Stock Exchange. My name is Loflin.

I am going to hand you Exhibit 19-O. You were asked some questions concerning that exhibit, which refers to a luncheon date scheduled for the American Stock Exchange on February 10, 1970.

Do you recall being questioned about that?

A Yes.

Q This morning Mr. Fried put this question to you, and it is with reference to Exhibit 19-0.

The question was: "Before February 5th, when you received this letter, do you recall talking to anyone at AMEX and telling them about what you wanted the meeting for?"

I ask you, sir, did you set up this meeting referred to in Exhibit 19-0?

A No.

Q Did you request that that meeting be scheduled for February 10th?

A No.

Q In response to some other questions that Mr. Fried asked you, you mentioned a meeting, meeting Mr. Saul while commuting.

Do you live in New Jersey, sir?

A Yes.

Q Did you live in New Jersey in, say, the winter of 1970?

A Yes.

Q Where did you live? What town?

A Wyckoff.

Q And where did Mr. Saul live?

A Ridgewood.

Q Is that on the same commuting line?

A Yes.

Q When you say you met Mr. Saul in the process of commuting, were these encounters pre-arranged? Did you have a date to meet him on the train?

A No.

Q Did he ask you to meet him on the train at any time?

A No.

Q These were just chance encounters?

A Yes.

MR. LOFLIN: Thank you.

I haven't any other questions, your Honor.

THE COURT: Redirect examination?

REDIRECT EXAMINATION

BY MR. FRIED:

Q Mr. Ramsey, did you confer with counsel last night regarding your testimony in this case?

A Last night?

Q Yes.

A No, sir.

Q When was the last time you conferred with any of the attorneys for the defendants?

A The attorneys for the defendants?

Q Yes. Mr. Brooks, Mr. Reilly or any of the gentlemen

sitting at this table.

A I don't recall, but I think it was a week or so ago.

Q How much time did you spend with the gentlemen at that time?

A An hour, hour and a half.

Q Did you go over all the documents that you were shown this afternoon?

A No.

Q Is your memory better this afternoon than it was this morning?

A No.

Q This morning you couldn't remember whether you went to the Securities & Exchange Commission before or after April 3rd; is that correct?

A I don't know if I answered that.

Q You don't recall being asked that question?

A Yes. I don't recall being asked that question.

Q Let me establish this:

Did you meet Mr. Foley or any of the Foley group before April 3rd, the closing?

A Not to my knowledge.

Q Did you meet any of the Foley group -- by that I mean Dr. Foley, his wife or Mrs. Salisbury -- after April 3rd?

A I met Mr. Foley.

Q On how many occasions did you meet Mr. Foley?

A Once. Perhaps twice.

Q Do you recall when that was?

A I lunched with Mr. Foley one day with Mr. Vanderbilt. I don't recall when.

Q Isn't it a fact that you met Mr. Foley, or Dr. Foley, after the liquidation of the insiders, which was some time the week of April 6th?

A I met him before that, at that luncheon.

Q Which luncheon?

A A luncheon that Mr. Foley and Mr. Vanderbilt and I went to.

Q Did that take place before or after April 3rd?

THE COURT: April 3rd being the day he made his investment.

A It took place after April 3rd.

Q How long after April 3rd did you meet Mr. Foley on that occasion?

A I have no idea.

Q Did you tell him that the insiders' subordinated notes would be liquidated during the week of April 6th?

A I don't recall the conversation.

MR. FRIED: Can I have Exhibits X, & and Z.

Q Mr. Ramsey, you were shown Defendants' Exhibits X,

which is a letter dated April 21, 1971, and you recalled that you had a meeting at that time with the Securities & Exchange Commission; is that correct?

A Correct.

Q When did you see this document, Exhibit X, for the first time?

THE COURT: Ever?

MR. FRIED: Yes.

A You mean at any time?

Q At any time. When was the first time you ever saw that document?

A I would presume, on the day it was written.

Q You mean you saw it on April 21, 1970?

A That's the date it was sent, and I signed it.

Q Do you have any present recollection now that you saw it on that day?

A I remember the letter.

Q My question is, do you have a present recollection now that you saw the letter, Exhibit X, on April 21, 1970?

A Without having seen the letter, I would not have remembered what date it was.

MR. FRIED: I move to strike that out.

THE COURT: Overruled.

Q Do you have a recollection --

THE COURT: He said without seeing it he wouldn't have remembered it.

(To the witness:) Now looking at it, do you remember it?

THE WITNESS: Yes. Looking at it, I do remember it.

Q Now, in this letter you state:

"Liquidation of secured demand note collateral. Obtaining additional secured note and selling New York Stock Exchange ownership."

On questioning by Mr. Brooks, you stated that related to the liquidation of insiders; is that correct?

A Yes.

Q Do you have any memory of when that took place?

A The insider sale?

Q Yes.

A The exact date -- I don't remember if I was out of town or not, but I remember the telephone call. If I can elaborate -- may I?

Q Answer it any way you want.

A I was out of town April 4th, but April 4th was a day that I happened to be and I was paged at the airport in San Juan, Puerto Rico, and it had to do with the selling out of the insiders. I remember it because I was being paged on the

phone while I was in the airport, and that's the first I heard about it.

Q You said that was April 4th?

A I think it was April 4th. I could be wrong by a day or two.

Q Mr. Ramsey, don't you remember yesterday my reading to you from your deposition about the time you were out of town?

A Yes. I was insure, and I did recall last night that call coming up here, because it all connected with the call at the airport.

Q You now recall it was April 4th?

A No; I didn't say that. I said it was within a day or two of April 4th.

Q Do you remember my reading to you from your deposition on April 15th as to whether you were asked this question:

"Q Were you out of town on April 1, 1970, do you recall?

"A Yes.

"Q What is there about April 3, 1970 that refreshes your recollection that you were out of town?

"A I just happen to know that I was out of town on that day."

Isn't it a fact that you made those answers that

you were out of town on April 1st, and now you say you were out of town on April 4th?

THE COURT: He stated he didn't remember either date precisely.

A I was out of town two weeks prior to that.

Q Were you out of town on April 6th?

A I don't recall.

Q Let me see if I can refresh your recollection.

I show you now Exhibit 57 for identification. Do you recall attending a meeting of the board of directors on April 6th at Blaire & Co.'s offices?

MR. BROOKS: Your Honor, what the witness has been shown is not in evidence.

THE COURT: Well, he may be shown something not in evidence to refresh his recollection.

THE WITNESS: I'm trying to find this. This is April 26, 1969 --

Q Turn to the draft of the April 6th minutes, please.

A No; I was absent on April 6th, according to this.

Q Look at April 7th.

THE COURT: Let's not refer to that yet.

(To the witness:) After looking at that, do you remember whether you were or were not in New York on April 6th?

THE WITNESS: I didn't remember, your Honor. I don't remember when I got back.

THE COURT: You mean you would be prepared to accept that as being true, is that correct, but that you have no independent recollection?

THE WITNESS: That's right.

Q I show you a memorandum of April 7th. Does that refresh your recollection whether you were at Blair & Co.'s offices on that morning?

A Do I recall that I was or I wasn't? No; I don't recall.

Q Look at April 8th --

THE COURT: I don't see why we need to continue this process indefinitely. This witness has testified at great length that he doesn't recall the dates.

MR. FRIED: Your Honor, I think I am entitled to test his memory.

THE COURT: Well, he testified yesterday, and he was straightforward about his failure to recollect. The jury can consider that in any way they wish.

Q Mr. Ramsey, I show you Exhibit 19-C and ask you if you now recall having seen that at the time the accountants prepared it.

THE COURT: Will you please tell us what it is?

THE WITNESS: This is a copy of the --

THE COURT: Whatever its title is.

THE WITNESS: Report of Certified Public Accountants Arthur Young to the board of directors on December 5, 1969.

A What is your question, sir?

Q Is your memory any better than it was when I first showed you that, as to whether you received that document?

MR. BROOKS: Your Honor, there was no cross-examination about this document. I think Mr. Freed is going beyond the scope of redirect.

THE COURT: Well, he can go into the questions of recollection, but not forever.

I will allow this question.

A I don't recollect receiving this.

Q I show you a letter addressed to you, dated February 19, 1970. Do you now recollect whether you received it?

MR. BROOKS: Same objection.

THE COURT: I will allow this question, but after this question I will sustain those objections, Mr. Fried.

A I don't specifically remember this one coming in.

Q Just one more. Another letter addressed to you --

THE COURT: No. I sustain the objection to any

further such interrogation.

Q Isn't it a fact that all of your meetings with the SEC took place after the Foley closing took place?

A I don't recall when the first meeting with the SEC was.

Q Is there any document here, Exhibits W, X, Y and Z or AA, which refreshes your recollection as to the first time you went to the SEC?

A I do not remember the first time I went to the SEC.

THE COURT: He is asking you, do any of these things refresh your recollection as to when you did go to the SEC.

THE WITNESS: No, sir.

Q Did you tell Dr. Foley that you had been to the SEC and had meetings with the SEC after April 3rd?

A Not to my knowledge.

Q Did you instruct anyone at Blair & Co. to tell Dr. Foley or anyone in his group that you and members of Blair & Co. had gone to the SEC and the Stock Exchange with your problems?

A Specifically?

Q Yes.

A No. I don't remember advising them anything like

that.

Q You stated this afternoon that at the meeting at the Bankers Club on January 15, 1970, you repeated several times that the prospective subordinated lenders should be told about the condition of the books and that Blair was out of control; is that correct?

A That's correct.

Q Isn't that the first time you ever gave that testimony, Mr. Ramsey?

MR. BROOKS: Objection.

A Not to my knowledge.

THE COURT: Overruled.

Q You were examined in the Vanderbilt case, in this case and in the Stock Exchange case, and I say that nowhere in the transcript is there any mention of the fact that you told the assembled people on January 15th what should be told the subordinated lenders.

A Was it ever asked me?

Q Do you challenge that statement?

A I don't remember whether it ever came up or not.

Q Do you remember being examined in the case of Arneil against Blair on December 2, 1975? Do you remember that?

A Yes.

Q Do you remember being asked this question:

"Q Were there any discussions among you and your fellow officers or directors about what kind of information ought to be given to potential investors in Blair?

"A I don't recall any offhand."

Do you remember being asked that question and making that answer?

A Yes.

MR. BROOKS: Your Honor, I request that counsel read from line 17 down on that page.

MR. FRIED: You can read whatever you want.

THE COURT: You may do so, Mr. Brooks. Mr. Brooks, you can do it now.

MR. BROOKS: I'm sorry, your Honor. Mr. Reilly tells me I'm on a different page. I would be pleased to read it, if that is still permissible. It is in the Arneil transcript.

THE COURT: All right. Go ahead.

MR. BROOKS: Line 17, page 208:

"Q Were there any instructions given to the employees who handled these customers' accounts with respect to investments by customers of Blair?

"A We operated under a full disclosure proposition, meaning that anyone should be given all information that

they wanted."

MR. FRIED: That is customers, your Honor.

THE COURT: Furthermore, it doesn't necessarily refer to the occasion that you are talking about.

BY MR. FRIED:

Q Mr. Ramsey, you are aware of the fact that this letter, April 21, 1970, addressed to Kevin T. Duffy, Administrator of the SEC, set forth a program of what you were going to do in Blair & Company. It contains six pages.

Is it a fact that that program was ever carried out?

A Completely? As much as possible.

MR. FRIED: May I read, your Honor, from this in part?

THE COURT: Yes.

Q On the second page you state:

"Beginning in the latter part of 1969, Blair, recognizing the existence of problems relating to record-keeping within the firm, took the following steps:

"1. Closed a total of nine branches.

"2. Evaluated all account executives and reduced the number of account executives by approximately 55 (since January 1, 1970).

"3. Blair decided to solicit no orders for any OTC stock on the buy side for $5.00 or under."

"OTC" means Over the Counter, does it not, Mr. Raysem?

A Yes.

Q (Reading)

"4. Contracted for office space in Lyndhurst, New Jersey, to house its operations department. The move to this location is scheduled to begin in June, 1970. A principal motivation for this move is to obtain higher quality personnel for the operations department.

"5. Consolidated the San Francisco back office and the New York back office on the Midwest System in new quarters, and went on the Sicom System.

"6. Reduced substantially its promotional advertising program, effective January 1, 1970.

"7. Reduced substantially its training program for new registered representatives.

"8. Added several people to its compliance department.

"9. Added a formal customer service department to supplement the work of the compliance department and to expedite the servicing of customer complaints.

"10. Increased substantially the number of

back office employees and the amount of overtime work for such employees. Specifically, in the transfer department a new shift of employees was added from 7 P.M. to 3 A.M. Operations department overtime tripled subsequent to the consolidation of the back offices and has continued at a very high rate.

"11. Secured additional capital by obtaining approximately $3,400,000 in secured demand notes and issuing $250,000 of subordinated debentures. Issued subordinated notes aggregating over $1,100,000 to withdrawing stockholders in lieu of cash payments for their stock."

Were all those items set forth in that letter?

A Yes.

Q Did you submit any of that information to Dr. Foley or any of his group prior to April 3?

A Did I personally?

Q Yes, you.

A No.

Q Did you instruct anyone at Blair & Company to deliver any such information to him?

A By name, on this particular document? I don't recall that I did.

Q In this document you say to the SEC that secured

additional capital was obtained in the sum of approximately $3,400,000. Was two million of that amount obtained from Mr. Ireland in February?

A Yes.

Q That was on a sixty day basis, was it not?

A Yes.

Q Nothing stated in there about Mr. Ireland had a right to withdraw that in sixty days, is there?

A No.

Q And on page 4 you have a projection of what Blair proposed to do. Were any of those proposals carried out? And you have ten different proposals, starting with April of 1970.

A Yes.

Q Which of those proposals were carried out?

A I would say that most of them were.

Q These were restrictions which you imposed on yourself, were they not?

A That's true.

Q And in this promise to the SEC you said you will hire no additional registered representatives, you will start closing branches, you will not enter into any new promotional advertising arrangements, and so forth, is that correct?

A True.

Q Exhibit Y.

THE COURT: Can you furnish the witness with Exhibit Y?

MR. FRIED: Take Exhibit W first. I want to read from Exhibit W, April 15, 1970. This is the paragraph following what Mr. Brooks read:

"Moran referred to the feeling of Stan Sporkin that the Commission itself is very fearful about the situation, such as that which exists at Blair & Co., Inc. He indicated that the SEC staff may very well come in for criticism by the Commission if it permits a firm to continue in business when subsequent events deomonstrate that this business should have been terminated."

Q Did you see that paragraph?

A Yes.

Q Did Mr. Moran make that statement at that time?

A Yes.

Q At that time the SEC had not made any investigation of Blair & Company, had it?

MR. BROOKS: I object, your Honor. I don't know whether the witness is competent to tell us whether the SEC had made an investigation.

Q (Continuing) Isn't it a fact that the SEC

merely had the information that you were supplying to it at that time?

THE COURT: If you know. Do you know what information they had?

THE WITNESS: No, sir.

Q In any event, this meeting held on April 15th was after the Foley closing.

THE COURT: Yes, it was.

Q Did you tell Dr. Foley or any of his group that you were having this meeting on April 15th with the SEC?

MR. BROOKS: Tell him when?

MR. FRIED: At any time during the month of April.

THE COURT: Did you ever tell him that you were going to have a meeting?

Do you mean going to have a meeting or had had a meeting?

MR. FRIED: Had had a meeting.

THE WITNESS: No.

Q Did you tell him that you were going to have the meeting with the SEC?

A I don't recall.

THE COURT: Tell me what your normal procedure was, if you can call it normal during this unusual period,

with regard to having a meeting with the SEC. Who did you tell about the fact that you were going to have an SEC meeting?

THE WITNESS: The staff and the board.

THE COURT: The staff and the board of Blair?

THE WITNESS: Yes.

THE COURT: You don't mean everybody on the staff. What people?

THE WITNESS: That would mean the Director of Personnel -- I mean the Director of Operations --

May I elaborate?

THE COURT: Yes. I would like to know what the procedure was at Blair.

THE WITNESS: From the time of the 15th meeting on, when I gave directions to set up meetings --

THE COURT: Do you mean January 15th?

THE WITNESS: I beg your pardon. January 15th. From that meeting onward, I gave instructions to the staff to keep everyone who should be advised advised -- that would mean the various agencies -- and to answer questions to the very best of their ability when asked, and specifically at board meetings to make sure that, number one, and counsel was there at board meetings -- to make very sure that we discussed and answered every

question that could come up and give them all the information they possibly could.

THE COURT: Did you give any instructions to the staff with regard to the dissemination of information to subordinated lenders?

THE WITNESS: I specifically gave instructions to Mr. Rush and to Mr. John Richardson to keep Mr. Foley completely well informed at all times, specifically.

THE COURT: Was it in the nature of your position to have direct dealings with the subordinated lenders for the purpose of informing them what was happening?

THE WITNESS: No, sir, it was not, generally.

BY MR. FRIED:

Q You were shown Exhibit W, and there reference is made to $10 million capital coming in. Did that relate to Thomson & McKinnon?

A No, sir.

Q Where was that $10 million supposed to come from?

A A private organization in another state.

Q Did you disclose the name of that organization to the SEC?

A Yes.

Q That didn't materialize.

A No.

Q You also sent to the SEC a letter dated April 22, which is Exhibit Y, in which you stated:

"This letter will supplement our letter to you dated April 21, 1970 in which we advised you that we were conducting preliminary negotiations with respect to obtaining additional capital for the firm from sources outside the firm amounting to approximately $1,500,000 and from sources within the firm of $1,500,000."

Did any of that money come in?

A I can't remember specifically. I think that was part of the Wygod money that was brought up.

Q The Wygod money never came in to Blair, did it?

A No.

Q It went over to Thomson & McKinnon.

A That's right.

Q At the April 15th meeting, did Mr. Moran mention the opinion of Stan Sporkin, saying that "it might be advisable for Blair & Co., In to liquidate at this time."?

A What about it?

THE COURT: Did he mention that this was Sporkin's opinion?

THE WITNESS: Yes.

Q You say that this memorandum accurately expresses what took place on April 15th, is that right, Mr. Ramsey?

A Which one is that?

Q Exhibit W (handing).

A Yes.

Q (Reading)

"Ramsey said that he will be the first to order liquidation when in his opinion it becomes necessary. He pointed out that if the SEC imposes restrictions that are too stringent, the firm may not be able to survive. Moran in turn pointed out that in other cases of this kind, he mentioned McDonald specifically, the giving of time to a firm to work out its difficulties is not the best course of action. He said that he is under extreme pressure from Washington and that it is entirely possible that the Washington staff may wish to speak directly with representatives of Blair & Co., Inc."

Was that said at that meeting?

A Yes.

MR. FRIED: At this time, your Honor, I offer the memorandum of the SEC dated April 21, which has not been received in evidence or offered in evidence.

I don't have copies of this. This is the only one I received.

MR. BROOKS: Are you going to show it to the witness?

MR. FRIED: Yes.

MR. BROOKS: Why don't you see if he recognizes it?

MR. FRIED: I am asking you if you have any objection if I offer it at this time.

MR. BROOKS: Your Honor, I don't have any objection in that this is a document from the files of the SEC. I recognize it as such. A copy has been furnished to both Mr. Fried and to us.

On that basis I have no objection to it going into evidence as such. I wonder what Mr. Fried plans to do with the witness, though, for what purpose he is offering it.

THE COURT: Let's hear his question first and then I will rule on whether it is admissible.

MR. FRIED: There is no objection to its offer, your Honor, so I ask that it be received in evidence.

THE COURT: I don't see how you can split hairs on all this, Mr. Brooks. I'll receive it in evidence.

What number is it?

MR. TURETSKY: 54A.

THE COURT: How is it described?

xxx (Plaintiffs' Exhibit 54A for identification was received in evidence.)

MR. FRIED: Your Honor, 54A is a memorandum of office conference dated April 21, 1970.

THE COURT: By whom?

MR. FRIED: It is by the Securities and Exchange Commission.

THE COURT: Is it signed by an individual?

MR. FRIED: It was furnished to both counsel by the Securities and Exchange Commission, your Honor. It is a memorandum of a conference held on April --

(Continued on next page)

THE COURT: Yes, but does anybody know or is it agreed who prepared this memorandum. Most of these memorandum indicate who prepared them.

Who prepared this one?

MR. BROOKS: We have no knowledge of that.

MR. FRIED: There is no way you can tell from this document.

Q Do you know that there was a conference at the Securities and Exchange Commission office on April 15th, Mr. Ramsey?

A You will have to show me a document again to recollect it.

Q Will you look at this memorandum and tell me whether that accurately states what occurred at the meeting indicated on that memorandum?

(Pause)

A Yes; it seems to.

Q Does that memorandum of the SEC refer to the same meeting referred to in Exhibit W, which you were shown a little while go by Mr. Brooks?

A Yes; it seems to.

Q Having read the SEC version of that meeting, would you say that that accurately represents what took place at that meeting?

A Yes.

Q Do you remember stating at that meeting at the Securities and Exchange Commission on April 15th as follows:

"Mr. Ramsey then gave those present a brief history of the Blair-Schwabacher merger. The original negotiations took place over a five month period. During that period of time Schwabacher's operations were in poor shape and under the advice of Arthur Young & Company and Andersen & Company Blair backed away from the negotiations." And so forth.

THE COURT: Mr. Fried, I feel that we are rehearsing material that is different from what we have had, can you come to it. We are behind in the case, and Mr. Ramsey has been on the stand for two days now.

MR. FRIED: You are right, your Honor. I will heed your advice.

I would just like to read from Exhibit AA.

(Mr. Fried read to the jury from Defendants' Exhibit AA in evidence)

Q Mr. Ramsey, it's a fact, isn't it, that within sixty days after that, you agreed to have an administrator appointed to liquidate Blair & Company?

A Yes.

Q Mr. Ramsey, you were shown Plaintiffs' Exhibit 2 which is a printed financial report as of September 26, 1969, and I ask you if by looking at that you can tell us, is there any indication on that statement of any missing securities in Blair & Company?

THE COURT: The statement speaks for itself.

MR. FRIED: All right.

Q Was this particular financial statement, which is as of September 26th, updated and given to, say, Dr. Foley or any of his group before April 3, 1970, as far as you know?

MR. BROOKS: Your Honor, I object. This is beyond the bounds of cross examination.

THE COURT: Sustained.

Q When was this document printed, do you know?

A No.

MR. BROOKS: Objection.

MR. FRIED: I won't be much longer, your Honor.

Q You were shown Exhibits 37 and 38 and told that you could make a mathematical computation regarding the ratio of the net capital, is that right?

A Yes.

Q But you can't change, can you, the fact that the amount of the net capital deficit on Exhibit 37 as

of January 30, 1970 was $4,246,000 --

THE COURT: Sustained. The witness did not purport to testify that he wanted to change it.

Q On Exhibit 38, the net capital deficit is --

THE COURT: You can argue those points, Mr. Fried.

MR. FRIED: All right.

THE COURT: Mr. Turetsky, I hope you will stop feeding Mr. Fried all this material.

MR. FRIED: Your Honor, I will give you this promise: I won't take any more.

Q I just have this letter of January 26, 1970. Mr. Ramsey, do you remember receiving that?

A I can't recall this letter per se. I remember the contents of it.

Q Was that received by your company at that time?

A It appears to be, yes.

MR. FRIED: I offer that in evidence.

MR. BROOKS: May I see it?

THE COURT: Have it tagged first. What number is it?

(Plaintiffs' Exhibit 54-B marked for identification)

MR. BROOKS: Your Honor, I object to the offer

on redirect. I don't think it was the subject of any cross examination. I think it should have been offered on the direct examination or not at all.

MR. FRIED: In one of the exhibits, your Honor, it was read that the conversion had been successfully completed in November, and I offer this letter on redirect as a refutation of that statement.

MR. BROOKS: Your Honor, I know of no exhibit that said that the conversion was successfully completed at any time.

THE COURT: As long as we are completing cross examination at this time, which I gather we are, I am not going to stand on the proposition that this should have been offered on direct although we should try to stick to those rules.

If it gives you any problems, you can take it up on recross examination. It is admitted.

(Plaintiffs' Exhibit 54-B for identification was received in evidence)

MR. FRIED: This is a letter dated January 26, 1970, addressed to Blair & Company, 20 Broad Street, New York, attention, Mr. James B. Ramsey, Jr.

(Mr. Fried read to the jury from Plaintiffs' Exhibit 54-B in evidence)

THE COURT: Mr. Fried, can you get to the point that you are trying to stress as being in answer to what was taken up on cross examination?

Q Isn't it a fact, Mr. Ramsey, that when you received this letter you were aware of the fact that you still had problems with Schwabacher regarding the conversion?

A Yes.

MR. BROOKS: I will object.

THE COURT: I will sustain the objection. I do not think Mr. Ramsey has ever testified that there weren't problems. Indeed, he stressed there were.

MR. FRIED: I will just read on sentence, then.

(Mr. Fried continued reading from Plaintiffs' Exhibit 54-B in evidence)

MR. BROOKS: I move to strike that reading.

THE COURT: I will strike the exhibit, Mr. Fried. I think that it has introduced a note of confusion that is too late at this stage.

MR. TURETSKY: Is your Honor striking the whole exhibit?

THE COURT: Yes.

MR. FRIED: I have no further questions, your

Honor.

MR. BROOKS: One question, your Honor.

RECROSS EXAMINATION

BY MR. BROOKS:

Q Mr. Ramsey, Mr. Fried asked you, wasn't it a fact that within sixty days after your meeting with the SEC on June 4, 1970, you had signed an agreement to have appointed for Blair an administrator to liquidate Blair. You answered yes.

I will try to refresh your recollection on that topic.

Do you recall how soon after a liquidator was appointed that Mr. Foley commenced a bankruptcy proceeding against Blair?

MR. FRIED: I submit this has nothing to do with this case, your Honor.

MR. BROOKS: Well, I am trying to refresh the witness' recollection on the date on which a liquidator was appointed.

MR. FRIED: I think that is a wholly improper way of trying to do it.

THE COURT: Well, whether it is proper or not, are you concerned that he acquiesced in a statement of an incorrect date?

MR. BROOKS: Yes.

THE COURT: All right. Give him something to refresh his recollection. Put it before him and he can see what the right date is.

MR. BROOKS: I hesitate to do that, your Honor; this is our trial memorandum, and it has the dates in it.

THE COURT: Well, if it refreshes his recollection, all right.

Q I ask you to read the bottom paragraph of that page, Mr. Ramsey, and ask if it doesn't refresh your recollection as to the date when the administrator was appointed for Blair & Company.

A It says on September --

THE COURT: Do not read it.

Does it refresh your recollection?

THE WITNESS: Yes, because it was Patrick Scorese coming in.

THE COURT: I do not think there should be any dispute about this.

MR. FRIED: If Mr. Brooks will tell me the date, we will concede it. I don't think it's important.

MR. BROOKS: Can we strike out the witness' testimony on that?

THE COURT: You now realize it was not sixty days after June 4th?

THE WITNESS: Yes.

THE COURT: It was a little longer?

THE WITNESS: A little longer.

THE COURT: You stuck to your promise: One question.

Mr. Loflin, if you have one question --

MR. LOFLIN: Your Honor, I am pleased to announce that I don't have even one.

THE COURT: All right.

(Witness excused)

THE COURT: We will adjourn for today and meet at 10:00 o'clock tomorrow morning.

(Adjourned to June 3, 1976 at 10:00 o'clock a.m.)

* * *